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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

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In Re: Chapter 11
LEHMAN BROTHERS Case No. 08-13555
HOLDINGS, INC., et al., (Jointly Administe
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8 * * * HIGHLY CONFIDENTIAL * * *

9 DEPOSITION OF HUGH McGEE

10 New York, New York

11 Monday, August 10, 2009

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Reported by:

FRANCIS X. FREDERICK, CSR, RPR, RMR

21 JOB NO. 24038

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	Page 2	Page 3
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2		2 APP E A R A N C E S:
3		3
4		4 JONES DAY, LLP
5	August 10, 2009	5 Attorneys for Lehman Brothers, Inc.
6	10:00 a.m.	6 222 East 41st Street
7		7 New York, New York 10017-6702
8		8 BY: ROBERT W. GAFFEY, ESQ.
9	HIGHLY CONFIDENTIAL deposition of	9 BRIDGET CRAWFORD, ESQ.
10	HUGH McGEE, held at the offices of Jones	10
11	Day, 222 East 41st Street, New York, New	11 SIMPSON THACHER & BARTLETT
12	York, pursuant to Notice, before Francis	12 Attorneys for the Witness
13	X. Frederick, a Certified Shorthand	13 425 Lexington Avenue
14	Reporter, Registered Merit Reporter and	14 New York, New York 10017
15	Notary Public of the States of New York	15 BY: MICHAEL CHEPIGA, ESQ.
16	and New Jersey.	16 CHRISTOPHER J. LUCHT, ESQ.
17		17
18		18 BOISE SCHILLER & FLEXNER, LLP
19		19 Attorneys for Barclays Capital
20		20 575 Lexington Avenue - 7th Floor
21		21 New York, New York 10022
22		22 BY: JACK G. STERN, ESQ.
23		23
24		24
25		25 TSG Reporting - Worldwide (877) 702-9580
	Page 4	Page 5
1		1
2	APP E A R A N C E S: (Cont'd.)	2 APP E A R A N C E S: (Cont'd.)
3	QUINN, EMANUEL, URQUHART, OLIVER &	3 JENNER & BLOCK, LLC
4	HEDGES, LLP	4 Attorneys for the Examiner
5	Attorneys for the Creditors Committee	5 330 N. Wabash Avenue
6	865 S. Figueroa Street, 10th Floor	6 Chicago, Illinois 60611-7603
7	Los Angeles, California 90017	7 BY: ROBERT L. BYMAN, ESQ.
8	BY: ERICA P. TAGGART, ESQ.	8
9		9
10	HUGHES, HUBBARD & REED, LLP	10 ALSO PRESENT:
11	Attorneys for the SIPA Trustee	11 RAJESH ANKALKOTI, Alvarez & Marsal
12	One Battery Park Plaza	12
13	New York, New York 10004-1482	13
14	BY: SETH D. ROTHMAN, ESQ.	14
15	SAMUEL C. MCCOUBREY, ESQ.	15
16	- and -	16
17	HUGHES, HUBBARD & REED, LLP	17
18	1175 I Street, N.W.	18
19	Washington, D.C. 20006-2401	19
20	BY: JOHN F. WOOD, ESQ.	20
21		21
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23		23
24		24
25		25 TSG Reporting - Worldwide (877) 702-9580

<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS - HIGHLY CONFIDENTIAL 2 (Witness sworn.) 3 MR. STERN: I'll just state on the 4 record our standing agreement concerning 5 confidentiality. The transcript will be 6 marked as highly confidential and within 7 a week of receiving the transcript we 8 will make appropriate designations under 9 the confidentiality stipulation. 10 MR. GAFFEY: And that's agreed. 11 * * * 12 H U G H M c G E E, called as a witness, 13 having been duly sworn by a Notary 14 Public, was examined and testified as 15 follows: 16 EXAMINATION BY 17 MR. GAFFEY: 18 Q. Good morning, Mr. McGee. My name 19 is Bob Gaffey. I'm with Jones Day. And we're 20 special counsel to the estate of Lehman 21 Brothers Holdings, Inc. We met briefly before 22 the deposition. 23 Can you give me an idea, Mr. 24 McGee, of your background at -- well, first 25 let me cover your educational background. TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 7</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 You're a graduate of Princeton; is 3 that correct? 4 A. That's correct. 5 Q. What year did you graduate? 6 A. 1981. 7 Q. And you also graduated law school 8 from the University of Texas? 9 A. That's correct. 10 Q. When did you graduate from there? 11 A. 1984. 12 Q. And do you keep an active license 13 to practice law in any jurisdiction? 14 A. No. 15 Q. Could you give briefly a 16 description of your employment after your 17 graduation from law school. 18 A. Sure. I went to work in Houston, 19 Texas for the law firm Andrews & Kurth as an 20 associate in the corporate and securities 21 department working primarily on corporate 22 finance transactions, some M&A transactions, 23 with a client base that was largely 24 energy-based. Had exposure to a number of 25 investment banks through the course of that TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 8</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 activity. Was asked by First Boston to 3 consider a career change. After the second 4 time that they asked, which was due to that 5 they had a young person leave, I moved to New 6 York City in late 1986, kind of beginning of 7 '87, and switched careers and became an 8 investment banker for First Boston in their 9 energy M&A department. Stayed there until 10 June of 1989 at which time I left to join 11 Wasserstein Perella which was a split-off from 12 First Boston. Stayed with Wasserstein Perella 13 through early 1993 when at such time the two 14 named partners of that firm were starting to 15 have some disagreements. And I joined Lehman 16 Brothers at that time as a senior vice 17 president heading up their Houston office 18 focused primarily on energy. 19 Over time built up the Houston 20 office, became a managing director, ran the 21 energy group, ran the energy and power group 22 globally, both of those. Then in December of 23 '02 the then head of investment banking had 24 been promoted up within Lehman Brothers and 25 they asked me to assume the job of global head TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 9</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 of investment banking which I was in that role 3 through the end of Lehman Brothers. 4 Q. And who did you replace as head of 5 investment banking? 6 A. A guy by the name of Brad Jack. 7 Q. Okay. I'd ask you, Mr. McGee, 8 just answer this question yes or no, please. 9 Did you review any documents to prepare for 10 your deposition testimony today? 11 A. I was shown some documents. 12 Q. Okay. Did any of the documents 13 you were shown have the effect of refreshing 14 your recollection about the events of the week 15 of September 15th, 2008? 16 A. To a limited extent, yes. 17 Q. Could you tell me what those 18 documents were? 19 A. I was shown some e-mail and I 20 think that's all. I was shown some e-mail 21 documents. 22 Q. Do you have a better recollection 23 of what the content of the e-mails was rather 24 than just e-mails? What were they about, what 25 were their dates, what can you remember about TSG Reporting - Worldwide (877) 702-9580</p>

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 those?
3 A. They were generally dated during
4 the period of time that you're referring to.
5 **Q. Okay.**
6 A. But I can't -- I mean, we looked
7 at different e-mails. I can't recall.
8 **Q. Okay.**
9 A. I'd be happy to address any
10 particular ones.
11 **Q. Okay. We'll be showing you some**
12 **e-mails as we go through the day.**
13 A. Okay.
14 **Q. Have you -- other than lawyers,**
15 **have you spoken to anyone to prepare for your**
16 **deposition today?**
17 A. No.
18 **Q. Have you spoken to anyone whose**
19 **deposition has been taken in connection with**
20 **this proceeding? Mr. Berkenfeld, Shapiro, Mr.**
21 **Felder?**
22 A. Well, I speak with them in the
23 normal course of business but not about this
24 topic.
25 **Q. Okay. Now, as you know, Mr.**
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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **primary negotiator or negotiators of the**
3 **transaction that was effected with Barclays?**
4 A. Well, Bart McDade was the
5 president of Lehman Brothers at the time. He
6 was the senior Lehman executive involved.
7 **Q. And is he what you would describe**
8 **as the primary negotiator?**
9 A. Well, we had our head of M&A, Mark
10 Shafir, involved. We had a full team. We
11 were trying to get a lot done in 48 hours.
12 **Q. Sure.**
13 A. But anything that was a major
14 decision was taken to Bart.
15 **Q. And apart from Mr. McDade and Mr.**
16 **Shafir who were the other senior Lehman**
17 **executives you would describe as involved in**
18 **the negotiations?**
19 A. Alex Kirk was actively involved
20 around some of the balance sheet things I
21 think.
22 **Q. And anyone else?**
23 A. Mark Shapiro from our
24 restructuring team. But he was more on the
25 basis of expertise as opposed to status as a

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 McGee, we're here to talk about the
3 transaction through which assets of Lehman
4 Brothers were sold to Barclays. Give me, if
5 you would, a description of your role in the
6 negotiations of that transaction or other
7 activities connected to that transaction.
8 A. Sure. In connection with the
9 transaction that ultimately resulted in
10 Barclays buying the North American business of
11 Lehman Brothers I was involved as head of
12 investment banking in an ongoing effort to
13 explore a number of different transactions
14 throughout the course of the summer leading
15 into the final weekend. And I was one of the
16 more senior Lehman people involved in the
17 activities that weekend. I would not
18 characterize myself as the primary negotiator.
19 I would say that I was focused on trying to
20 facilitate the transaction with the particular
21 focus on trying to make sure that we delivered
22 the human capital side of the equation to that
23 franchise that we preserved it, were able to
24 then deliver it as part of the transportation.
25 **Q. Who would you describe as the**
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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 senior Lehman executive.
3 **Q. Um-hum. And anyone else?**
4 A. I'm not sure how far down the
5 chain you want to go.
6 **Q. Stay up at the top of the chain if**
7 **we could for a moment because I know there's a**
8 **lot of people who do something in connection**
9 **with it. I'm looking at the senior activities**
10 **either at the table or near the table. Who's**
11 **involved in getting the transaction done?**
12 A. Well, certainly Mike Gelband was
13 there as well.
14 **Q. Was Paolo Tonucci involved?**
15 A. Yes.
16 **Q. What was his role?**
17 A. Well, Paolo and Ian Lowitt were
18 both involved around some of the balance sheet
19 type items.
20 **Q. And when you say the balance sheet**
21 **type items, does that include putting a value**
22 **on the assets that were transferred?**
23 **Assessing the value?**
24 A. I'm not sure.
25 **Q. Did you have any role or**
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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 involvement in that process during the week?

3 A. No.

4 **Q. I should say just for clarity when**
5 we're talking about "the week" we're talking
6 about the week of September 15th, right?

7 A. Correct.

8 **Q. You made a reference before to the**
9 weekend and I just want to put some dates on
10 that. You're talking about the week of
11 September 13th and 14th.

12 A. Correct.

13 **Q. Holdings files its bankruptcy on**
14 the 15th and what we're talking about is the
15 week that follows that.

16 A. Correct.

17 **Q. Before that week, you mentioned**
18 before that during the summer you were
19 exploring different options with respect to
20 Lehman. Could you give me a general
21 description of the type of options that were
22 being explored and the negotiations that took
23 place. Before the negotiations that led to
24 the transportation that occurred.

25 A. Well, going all the way back to
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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 **Q. Before Friday, the 13th -- is that**
3 correct? The 13th?

4 MS. CRAWFORD: The 14th -- I mean
5 the 12th.

6 MR. GAFFEY: I have not come armed
7 with my calendar.

8 **Q. Okay. Before Friday the 12th.**

9 A. Okay.

10 **Q. Isn't it so that there were**
11 discussions with Barclays and Bank of America
12 about a global purchase of Lehman?

13 A. Well, I need -- yes and no. So,
14 yes in that there were discussions with Bank
15 of America and Barclays leading into that
16 final weekend. Bank of America had a team
17 that showed up if I -- I may be a day off but
18 I think it was Thursday and I don't think the
19 Barclays team actually showed up until Friday,
20 kind of mid day Friday. And then they went
21 through that night and then through Saturday.
22 BofA efforts were slightly ahead because their
23 team showed up first. But it's an accurate
24 statement to say that discussions at some
25 point were going on contemporaneously with

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 the weekend in March when Bear Stearns went
3 down, Lehman Brothers and all financial
4 institutions were facing an increasingly
5 difficult and deteriorating market. We looked
6 at a bunch of different financing
7 alternatives. We looked at transaction
8 alternatives. Some that we could control
9 ourselves. Some that would involve
10 transactions with third parties. Those that
11 we could do ourselves were transactions such
12 as the spin-off of our commercial real estate
13 business, the sale of a partial interest in
14 the investment management division. The
15 transactions involving third parties ranged
16 from, you know, potential combinations to
17 strategic investments. And they involved
18 parties from -- you know, all different parts
19 of the globe.

20 **Q. And in the week preceding the week**
21 we've been talking about, were there
22 discussions with Barclays?

23 A. The discussions with Barclays
24 really took place starting on Friday and then
25 through the course of the weekend.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 both Bank of America and Barclays.

3 **Q. Did there come a point over the**
4 weekend where the discussions with Bank of
5 America came to an end?

6 A. There was a point on Saturday
7 where it became clear that the additional
8 request for follow-up due diligence evaporated
9 from Bank of America and our speculation was
10 that they were off doing something else. We
11 were never formally told Bank of America is
12 discontinuing discussions.

13 **Q. So essentially the phone stops**
14 ringing with Bank of America. What happens
15 with Barclays? Do the discussions with
16 Barclays that took place on the Friday and the
17 Saturday, do they at some point cease prior to
18 the bankruptcy filing?

19 A. The discussions with Barclays
20 continued straight through to Sunday morning
21 where it appeared at one point in time that
22 there was a handshake deal for the entire
23 company in a structured transaction.

24 **Q. Now, in the interest of your time**
25 and everybody's time today we can agree that

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 the structured transaction for the entire
3 company did not take place. What took place
4 was a sale of the assets, right?

5 A. That is correct.

6 Q. Okay. If you know, why didn't the
7 structured transaction for the entire company
8 take place?

9 A. I could give you my understanding.

10 Q. Sure.

11 A. I can tell you I was sitting in a
12 conference room at the Simpson Thacher
13 Conference Center with Jerry Del Missier, the
14 president of BarCap, and we were talking about
15 various plans as we consummated the
16 transaction, things that we could do moving
17 forward, et cetera. My cell phone rang and it
18 was from a team that was down at the New York
19 Fed. And they reported to me that in fact the
20 transaction had fallen apart on some
21 regulatory approvals. So everything I would
22 tell you at that point on is second hand.

23 Q. Let's stay with your first-hand
24 knowledge for the moment. Did you have an
25 understanding of what the regulatory approval

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 structure.

3 Q. Sure.

4 A. Until that Sunday, the honest
5 answer is I don't know. My business card said
6 Lehman Brothers.

7 Q. So Holdings files for bankruptcy
8 in the early -- very early morning hours of
9 Monday, the 15th. And I'd like to focus your
10 attention on that time period.

11 At what point after that does it
12 come to your attention that there are renewed
13 discussions with Barclays about the
14 transaction?

15 A. I'd received a phone call from
16 Bart McDade that evening that said we're going
17 to try to see if there's an opportunity to
18 pursue a transaction with Barclays and we're
19 going to meet first thing in the morning.

20 MR. STERN: You just may want to
21 clarify what "that evening" is.

22 Q. That was my next question. When
23 you say that evening, are we on the evening of
24 Sunday?

25 A. Sunday.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 issue was?

3 A. I have an understanding what was
4 told to me.

5 Q. Okay. Do that.

6 A. That the FSA had some objections
7 to effectively stepping into the shoes of
8 Lehman on the trading side and an unlimited
9 guarantee without shareholder approval.

10 Q. Okay. After the FSA issue arose,
11 was there a point, however brief, where the
12 discussions with Barclays came to a halt?

13 A. Yes.

14 Q. And did those discussions resume
15 at any point before the filing of Lehman
16 Brothers Holdings for bankruptcy protection?

17 A. No.

18 Q. By the way, I should ask you in
19 the description of your employment that you
20 gave me before, were you an officer of
21 Holdings or Lehman Brothers, Inc. or both?

22 A. That's a good question.

23 Q. Everybody answers that that way.

24 A. I assume of Holdings but maybe
25 both. We never thought about the corporate

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. Going into Monday.

3 A. Going into Monday. Sunday
4 evening.

5 Q. And, best you recall, tell me what
6 Mr. McDade told you about the nature of the
7 transaction that was being contemplated at
8 that time.

9 A. That we were going to get teams
10 together to see if there was -- still a way to
11 do a transaction.

12 Q. Okay. What happened next?

13 A. I communicated with some of my
14 team, including Mr. Shafir, Shapiro, some
15 others, and we had agreed to meet first thing
16 in the morning at Lehman Brothers. I can't
17 remember if that was 7 a.m., 7:30, 6:30. But
18 it was relatively early.

19 Q. And on the Monday morning -- is
20 there a point on the Monday morning where you
21 catch up with Mr. McDade?

22 A. Yeah. I think I probably saw him
23 first thing.

24 Q. And when you saw Mr. McDade first
25 thing what did you say to him, what did he say

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **to you about the possibility of renewed**
3 **negotiations with Barclays?**

4 A. I can't recall specifically what
5 was said.

6 **Q. All right. And did there come a**
7 **time when an agreement was reached with**
8 **Barclays about a transaction?**

9 A. Sure. At some point over the next
10 two days, you know, agreement was reached and
11 an agreement was signed. I don't recall
12 exactly what time it was.

13 **Q. And in the course of those**
14 **negotiations of that agreement, did you have**
15 **any involvement in negotiating with people**
16 **from Barclays?**

17 A. Yes.

18 **Q. Describe your role in those**
19 **negotiations.**

20 A. As I mentioned before I was
21 focused on preserving the franchise. That
22 involved keeping the people and making sure
23 they were treated fairly. So the place where
24 I was most directly involved was the
25 provisions of the agreement dealing with comp

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 and severance.

3 **Q. Did you have any role at all in**
4 **the negotiation of the terms of the agreement**
5 **regarding the purchase of assets?**

6 A. No.

7 **Q. Were you present while any of**
8 **those negotiations took place regarding the**
9 **purchase of assets?**

10 A. The answer is yes. But I was
11 walking in and out of the room.

12 **Q. Okay.**

13 A. So I wasn't directly involved in
14 the -- you know, taking the ball all the way
15 down the field so to speak. I was in and out
16 of the room. I was trying to make sure the
17 overall -- that we were -- that we had an eye
18 on the different pieces of the transaction and
19 that they were all moving along so that we
20 didn't forget something since we had to get
21 the entire thing done in 48 hours.

22 **Q. When you say you were in and out**
23 **of the room, what room are you referring to?**

24 A. One of the conference rooms that
25 was the larger ones up on the 32nd floor of

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 Lehman Brothers where everyone was basically
3 situated.

4 **Q. And was there -- as I understand**
5 **it there's a lot of activity going on on the**
6 **32nd floor that day and that night. Was there**
7 **one room where -- you would characterize as**
8 **the main table where the negotiations were**
9 **going on?**

10 A. There's a -- one of the larger
11 dining rooms had a large conference table in
12 it and that was a room where there was a lot
13 of meetings to discuss stuff with two sides
14 because there was more seating and there was
15 also kind of an anti-room next to that.

16 **Q. Is that the room where McDade is**
17 **negotiating?**

18 A. He was moving around as well is my
19 recollection. But I wasn't keeping track of
20 his specific whereabouts all the time.

21 **Q. Do you know -- is there anyone you**
22 **would describe as the primary or main**
23 **negotiators for Barclays?**

24 A. Again, my participation in the
25 direct negotiations was somewhat limited but

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 in the times I was in the room Archie Cox was
3 in there a lot.

4 **Q. Anyone else from Barclays?**

5 A. Certainly Rich Richie was on the
6 scene.

7 **Q. And anyone else?**

8 A. Not that I saw in the room.

9 **Q. Do you know a man named Michael**
10 **Klein?**

11 A. Yes.

12 **Q. Was Michael Klein involved in the**
13 **negotiations?**

14 A. Yes. But he was an advisor.

15 **Q. To whom?**

16 A. Barclays.

17 **Q. Do you know where Mr. Klein works**
18 **today?**

19 A. No.

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REDACTED

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8 **REDACTED**
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20 **Q. Well, prior to -- let me just put**
21 **some dates in place so we're clear where we**
22 **are in the week. The asset purchase agreement**
23 **was signed on September 16th and the**
24 **transaction closed on Monday, the 22nd, so**
25 **with those two dates in mind a lot of my**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **questions will relate to that time period.**
3 **Prior to the closing of the**
4 **transaction on the 22nd of September, were you**
5 **engaged in any negotiations with Barclays**
6 **concerning your compensation as a Barclays**
7 **employee after the transaction?**

8 A. Yes. I had a discussion with Bob
9 Diamond.

10 **Q. Just one discussion?**

11 A. Two discussions.

12 **Q. Okay. Could you describe each of**
13 **them to me, when they took place and who said**
14 **what.**

15 A. Both discussions took place that
16 Monday evening. Bob Diamond approached me and
17 told me what he was thinking about for '08
18 compensation. He also indicated that it was
19 important that I joined Barclays and run
20 investment banking for Barclays. And my
21 understanding is that there were a group of
22 people that were important to agree to join
23 and that I was one of those people.

24 **Q. Who else was in the group of**
25 **people for whom it was important to join?**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 A. I assume Bart McDade and others.
3 You know, Jerry Donini. People that ran
4 important businesses that were an important
5 part of delivering the actual franchise as
6 part of the transaction.

7 **Q. In addition to McDade and Donini,**
8 **do you remember specifically who any of those**
9 **people were?**

10 MR. STERN: Objection to the form.
11 I don't think he said that he
12 remembered. He said he assumed.

13 MR. GAFFEY: Okay. That's fair.

14 **Q. But, do you have an idea, then,**
15 **sir, of who the other people were in addition**
16 **to McDade and Donini?**

17 MR. STERN: Same objection.

18 A. Well, I assume -- I did not see --
19 there was discussion of seven. I can
20 speculate who the seven were but no one told
21 me specifically who they were and I'm sure you
22 have that information.

23 **Q. When you were devoting some of**
24 **your energies to moving capital over to**
25 **Barclays and keep the franchise intact and all**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **of that, was there a group of about eight**
3 **senior executives that were deemed critical to**
4 **the transaction?**

5 A. I believe that's right.

6 **Q. Were you involved in any way in**
7 **the determination as to who those eight**
8 **critical executives were?**

9 A. No.

10 **Q. And was there a group of**
11 **approximately 200 Lehman personnel who were**
12 **deemed important and some percentage of them**
13 **had to go over to Barclays for the deal to**
14 **close?**

15 A. My understanding is that there was
16 such a designation.

17 **Q. Okay. And were you involved in**
18 **putting together that group of 200 or so?**

19 A. Yes. Insofar as it involved
20 investment bankers.

21 **Q. Now, you said you spoke to Mr.**
22 **Diamond on that Monday. Again, for date**
23 **purposes are we on Monday, the 15th?**

24 A. Correct.

25 **Q. Okay. And when you spoke -- and**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 that was one of two conversations you had with
3 Mr. Diamond.

4 A. (Witness nods.)

5 **Q. When was the second one?**

6 A. Later that same evening. Night.

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Q. And was that -- to your knowledge, was the fact that Mr. Diamond had made an employment offer to you during the negotiations disclosed to the boards of Lehman Brothers Holdings and Lehman Brothers, Inc.?

MR. STERN: Objection to the form.

Q. Do you know one way or the other?

A. I have no idea.

Q. And do you know if the discussions

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 about employing other senior executives at
3 Lehman apart from yourself that you were
4 talking to Mr. Diamond about, were disclosed
5 to the board of either Lehman Brothers
6 Holdings or Lehman Brothers, Inc.?

7 A. I have no idea.

8 Q. Do you know if Mr. McDade was in
9 similar discussions with Barclays during the
10 week leading up to the closing on 22nd of
11 September?

12 A. I have no idea.

13 Q. You referred in one of your
14 answers a minute ago to the division. When
15 you say that, are you referring to the
16 investment banking division?

17 A. Yes. The investment banking
18 division.

19 Q. Now, there were portions -- and
20 I'll show it to you in a while. We'll come
21 back to some more detail on this so I'm
22 looking for your general recollection at this
23 point. But there were portions of the asset
24 purchase agreement that dealt with the issue
25 of compensation to transferred employees; that

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 the room but I recall that Archie Cox was one
3 of the more senior people from Barclays in the
4 room.

5 Q. And, again, for lack of a better
6 term, would it be fair to describe Archie Cox
7 as the principal negotiator from Barclays on
8 that issue?

9 MR. STERN: Objection to form.

10 A. Don't know.

11 Q. Well, were you talking to anybody
12 from Barclays other than Archie Cox about
13 these matters?

14 A. There were a bunch of people in
15 the room. I didn't know all the people from
16 Barclays so I don't know who else -- who was
17 lawyers, inside lawyers, outside lawyers, who
18 was -- but Archie Cox is a name of a person
19 that I remember was in the room.

20 Q. And apart from yourself, were
21 there others on the Lehman side of the table
22 engaged in discussions with Barclays about the
23 terms of compensation for transferred
24 employees?

25 A. Mark Shafir who was head of M&A

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 is, employees that went from Lehman to
3 Barclays.

4 Do you have a general
5 understanding that that's so?

6 A. Yes.

7 Q. Okay. Did you have any
8 involvement in the negotiation of the terms of
9 those provisions of the asset purchase
10 agreement?

11 A. Yes, I did.

12 Q. Okay. And just as a general
13 matter, and again I'll show you the final at
14 some later point today, but did you look at
15 drafts of that provision?

16 A. Yes.

17 Q. Those provisions?

18 A. Yes.

19 Q. And did you engage in negotiations
20 about the terms of those provisions with
21 personnel from Barclays?

22 A. Yes.

23 Q. And with whom at Barclays did you
24 engage in those discussions?

25 A. There were a number of people in

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 was kind of very focused on all aspects of the
3 deal.

4 Q. Anyone else?

5 A. No.

6 Q. What lawyers were involved in
7 drafting the provisions of the APA concerning
8 compensation? For transferred employees.

9 A. I don't know.

10 (Deposition Exhibit 98, document
11 bearing production number 10282956,
12 marked for identification as of this
13 date.)

14 BY MR. GAFFEY:

15 Q. Mr. McGee, I've put before you
16 what we've marked as Deposition Exhibit 98, a
17 one-page document bearing number 10282956.

18 Have you seen that document
19 before?

20 A. I don't recall.

21 Q. Do you know what it is? You'll
22 see that it appears to be an e-mail from Peter
23 Calistri to you.

24 A. I see that it's an e-mail from
25 Peter Calistri to me.

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<p style="text-align: center;">Page 38</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Q. Okay. Who's Peter Calistri? 3 A. Peter Calistri is the CFO of the 4 investment banking division at Lehman 5 Brothers. 6 Q. And the e-mail is entitled Exec 7 Comm Comp and Retention and lists the names of 8 six people. Parker, Weiss, Stephenson, 9 Wieseneck, Gatto, Hash. 10 Q. Do you see that? 11 A. Yes. 12 Q. Do you know who those people are? 13 A. Yes. I know who these people are. 14 Q. Who are they? 15 A. Those are the names of the 16 investment banking executive committee that 17 are from Lehman Brothers. 18 Q. Now, when you referred a few 19 moments ago to a group of about eight -- when 20 we were talking a few moments ago about a 21 group of eight senior Lehman executives who 22 were critical to the transaction, are these 23 six people among those eight? 24 A. No. Not to my knowledge. 25 Q. And forgive me. I may have TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: center;">Page 39</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 forgotten if I asked you this and you answered 3 it. 4 Q. Do you know who the eight were who 5 were the critical eight? 6 A. I answered previously that I 7 assumed it was McDade, Jerry Donini, Eric 8 Felder. Some people that ran some major 9 businesses that presumably BarCap would want 10 the business leaders who led the people to 11 come across, but I don't -- no one ever shared 12 that list with me. 13 Q. Now, these people, Parker, Weiss, 14 Stephenson, Wieseneck, Gatto and Hash, did 15 they all work for you? 16 A. They all worked for me in 17 investment banking. 18 Q. And did you spend time during the 19 week leading up to the closing on the 22nd 20 addressing compensation for this group of six 21 people? 22 A. Yes. We talked about 23 compensation, what it might take to retain 24 some of these people. But this is -- this is 25 just an e-mail somewhere along the way. I TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: center;">Page 40</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 don't think any of these numbers were pinned 3 down at this point. 4 Q. Did there come a point where 5 numbers were pinned down for people in the 6 investment banking division? 7 A. Yes. There did come a point when 8 numbers were pinned down for people. 9 Q. When did that happen? 10 A. It varied person by person and 11 group by group. It was an iterative process 12 that took quite a while. 13 Q. Okay. Was it pinned down before 14 the transaction closed? 15 A. Was what pinned down? 16 Q. Compensation for the senior 17 executives within the investment banking 18 division. 19 A. Specific numbers next to specific 20 names? 21 Q. Yes. 22 A. No. 23 Q. When were there specific numbers 24 next to specific names? 25 A. It would have been weeks and TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: center;">Page 41</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 almost a month later. 3 Q. By later after the closing. 4 A. Later after the closing, correct. 5 Q. Okay. On Exhibit 98 with respect 6 to Mr. Parker and Mr. Gatto, you'll notice 7 that there's a column for 2009. 8 Q. Do you see that? 9 A. Yes, I do. 10 Q. As a general matter, without 11 reference to that particular document, as a 12 general matter were some of the investment 13 banking division personnel -- withdrawn. 14 Q. With respect to some of the 15 investment banking division personnel were 16 there discussions about retention payments 17 that would be paid or guaranteed in connection 18 with 2009? As opposed to 2008? 19 A. The 2009 column next to Parker in 20 this particular e-mail refers to a guarantee 21 of compensation for the year 2009. In other 22 words, a two-year agreement of compensation 23 for '08 and '09. 24 Q. The retention amount was a 25 separate retention program that was being put TSG Reporting - Worldwide (877) 702-9580</p>

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2 in by BarCap that was consistent with trying
3 to hold the franchise together and somewhat
4 make up for the wipe-out on the net worth of
5 all the senior Lehman people to -- the
6 retention program was structured such that it
7 vested over a couple of years.

8 Q. And have you heard that retention
9 program referred to as a special cash award?

10 A. No, I have not heard it referred
11 to as that.

12 Q. Is that a term you've heard before
13 in connection with compensation?

14 A. No.

15 Q. Withdrawn.

16 I--

17 (Deposition Exhibit 99, document
18 bearing production number 10265851,
19 marked for identification as of this
20 date.)

21 BY MR. GAFFEY:

22 Q. Mr. McGee, I've put before you
23 what we've marked as Deposition Exhibit 99 an
24 e-mail from Tim Sullivan sent Saturday,
25 September 20th, 8:27 p.m. Greenwich meantime

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. Gatto and Hash. Mr. Sullivan
3 writes to you here, "Barclays has drafted the
4 letters to IBD exec members but we want to
5 confirm the terms hadn't changed. Below is
6 what we currently have on our sheets. Any
7 changes we should post Barc on."

8 Were there -- now we're at
9 Saturday the 20th. We're two days before the
10 closing. Were you at that stage of the week
11 involved in the negotiations of what the
12 particular numbers would be for these six
13 people?

14 A. Continuing to have discussions --
15 at that point on Saturday I had -- I had left
16 New York on Wednesday to fly to London to try
17 and see if there was an opportunity to put a
18 transaction together for the European business
19 of Lehman Brothers. So this was all -- I'm
20 not sure when I received this e-mail, whether
21 I was on a plane, if I was in London at the
22 time or if I was flying back. But there
23 was -- there were no letters that were signed
24 and I think the final numbers around all these
25 people changed even from these numbers.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 which would put it at about 4:27 p.m. eastern
3 time to you, a copy to Jennifer Becker.
4 Subject, Exec Comm Deals.

5 Have you seen this before?

6 A. Yeah. This is an e-mail to me
7 from Tim Sullivan.

8 Q. Okay. Who's Tim Sullivan?

9 A. Tim Sullivan works for me in my
10 office.

11 Q. Did he have a particular role or
12 function? What I want to know is he an HR guy
13 or did he have some kind of line
14 responsibility?

15 A. He is -- you might think of him as
16 almost a chief of staff for me.

17 Q. And in that e-mail marked as
18 Deposition Exhibit 99 there are references
19 again to Weiss, Parker, Ros, who I believe
20 would be a reference to Stephenson; is that
21 right?

22 A. That is correct.

23 Q. Larry, that would be a reference
24 to Wieseneck; is that correct?

25 A. That is correct.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. Okay. When you went to London,
3 was that at the request of Mr. Diamond?

4 A. No.

5 Q. Did there come a point where Bob
6 asked you to go to London?

7 A. No.

8 Q. During that week?

9 A. No.

10 Q. Were there discussions about the
11 European business with Barclays or with other
12 entities?

13 A. I flew to London because I
14 personally felt horrible about the way the
15 transaction had played out for the people in
16 London. And I was getting bombarded with
17 phone calls and e-mails, what are we to do,
18 are we in the transaction, is there a plan
19 for step 2.

20 So I flew over as much as anything
21 out of a feeling of personal obligation to all
22 those colleagues that I had hired and had
23 worked for me. Spent time trying to figure
24 out whether there was the potential for a
25 transaction. Jerry Del Missier also came to

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 London. But given the absolute devastation in
3 the financial markets there was not scope or
4 appetite to put together a significant
5 transaction.

6 Q. Jerry Del Missier was from
7 Barclays?

8 A. That is correct.

9 Q. Did he go with you on the trip?

10 A. No. He arrived after I was
11 already there.

12 Q. And were you in discussions -- was
13 he involved in these discussions about looking
14 for some sort of remedy to the European
15 issues?

16 MR. STERN: Objection to the form.

17 Q. I think you can answer it.

18 A. I'm not sure what you mean by
19 "remedy to the European issues." That's --
20 it's -- depending on who you ask that question
21 to there's a long list of things that need to
22 be remedied.

23 Q. Yeah, I guess that's right. Let
24 me try to ask it a different way.

25 You go to London to meet with

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 people who you have hired because you have
3 some concern about what's going to befall them
4 because of the transaction. You're looking
5 for some sort of transaction on the European
6 side of things. Is Mr. Del Missier involved
7 with you in that effort?

8 A. He was in Europe. We spent some
9 time. He was focused on I think a lot of
10 things in addition to that given the world was
11 blowing up.

12 Q. Did you meet with Mr. Diamond when
13 you were in London?

14 A. No.

15 (Deposition Exhibit 100, document
16 with the first page bearing production
17 number 10287489, marked for
18 identification as of this date.)

19 BY MR. GAFFEY:

20 Q. Mr. McGee, I've put before you
21 what we've marked as Deposition Exhibit 100, a
22 multi-page document bearing 10287489 with a
23 series of attachments. Take a minute, please,
24 to look through it sufficiently to tell me
25 whether you recall seeing it before.

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1 H. McGEE - HIGHLY CONFIDENTIAL

2 MR. CEPPIGA: Bob, I don't know if
3 you care but the document -- these
4 numbers are not sequential after that
5 first number.

6 MR. GAFFEY: They're not, Mike,
7 because the number system that was used
8 to -- they have not been turned over in
9 discovery so they're not subsequent
10 Bates numbers.

11 MR. CEPPIGA: But you know that
12 they go together.

13 MR. GAFFEY: That's how they came
14 out of the box, yeah. I don't mean the
15 box. My best knowledge is, yeah, this
16 is a singular document.

17 A. Can you repeat the question?

18 Q. Have you seen the document before?

19 MR. CEPPIGA: In fact, I see there
20 are two pages with the same numbers on
21 two consecutive pages.

22 MR. GAFFEY: You will because the
23 document is numbered, not the pages
24 same.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 BY MR. GAFFEY:

3 Q. Have you seen the document before?

4 A. This appears to be an e-mail
5 addressed to me which has some drafts of
6 potential contracts.

7 Q. Okay. Now, the e-mail is dated
8 September 21, 2008, 10:04 p.m. Greenwich
9 meantime which is about 6:04 p.m. eastern
10 time.

11 By that time, by Sunday night,
12 were there final offer letters put together
13 for this group of people including Mr. Gatto,
14 Mr. Weiss, Mr. Wieseneck, and Mr. Hash?

15 A. No. I don't believe any of these
16 letters were final.

17 Q. And there's a c.c. on this e-mail
18 to a Melissa Kastens. Do you know who Ms.
19 Kastens is?

20 A. I do not know Melissa Kastens.

21 Q. Mr. McGee, were you one of the
22 eight critical employees?

23 MR. STERN: Objection to the form.

24 A. I assume that I was. But no one
25 ever -- I never saw the list. I saw a

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<p style="text-align: right;">Page 50</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 reference to eight. 3 Q. Um-hum. 4 A. But I -- Bob had mentioned to me 5 we're not going to do this deal if you're not 6 going to run investment banking. I assumed 7 that I was. But -- and that was the context 8 in which I took his statement that I was one 9 of that number. 10 Q. Who would you ask if you wanted to 11 know if you were one of the eight critical 12 people? 13 A. Who would I have asked? 14 Q. Who would you ask now? I'd like 15 to put them over there and ask them. So who 16 would you ask now? 17 A. I would ask the people who put 18 that list together which are the senior BarCap 19 people. 20 Q. Amongst the former Lehman people 21 who would you ask? 22 A. Bart McDade. 23 (Deposition Exhibit 101, document 24 with the first page bearing production 25 number 10322002, marked for TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 51</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 identification as of this date.) 3 MR. STERN: Could we just go off 4 the record for a second. 5 (Discussion held off the record.) 6 BY MR. GAFFEY: 7 Q. Okay. We're back on the record. 8 Mr. McGee, have you seen the 9 document that we've marked as Exhibit 101? 10 Have you seen that before? 11 A. No. This is the first I've seen 12 of this. It's not addressed to me. 13 MR. STERN: I guess we should just 14 note on the record that which we stated 15 off the record which was a concern about 16 the non-sequential numbering of the 17 attachments to the exhibit and an open 18 question as to whether the attachments 19 are, in fact, attachments to the 20 original e-mail but subject to that 21 objection. 22 BY MR. GAFFEY: 23 Q. Mr. McDade, would you turn to the 24 sixth page. 25 MR. STERN: McGee. TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 52</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Q. I beg your pardon. There's too 3 many Mcs in here. I meant that as a reference 4 to me, folks. I'm sorry. 5 Mr. McGee, would you please turn 6 to the sixth page from the back of this 7 document. 8 A. I see it. 9 Q. And do you know, Mr. McGee, 10 whether an offer of employment was made to Mr. 11 McDade during the week preceding the closing 12 on September 22nd? 13 A. I would have no way of knowing 14 that one way or the other. 15 Q. And if you would now turn to the 16 second page of the exhibit. And I would 17 direct your attention to the three-page 18 unsigned letter that begins there. Appears to 19 be addressed to Hugh E. McGee, III. September 20 18th. Ask you if you've seen those three 21 pages before. 22 A. This looks like a draft of the 23 agreement that Barclays -- that I signed with 24 Barclays. 25 Q. Did you see a draft written TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 53</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 employment agreement sometime on or around the 3 date this document bears, September 18th? 4 A. I'm not sure when I was actually 5 handed a draft of an agreement. 6 Q. Do you recall if you saw a draft 7 of a written agreement at any point prior to 8 the 22nd? 9 A. No. I would not have because 10 draft agreements were not -- they didn't send 11 me an e-mail. It would have been handed to 12 me. And so it would have been after the 13 closing when I would have first seen the draft 14 of my agreement. 15 Q. I just want to follow up on that a 16 little bit because I think we're talking about 17 two issues and I want to separate them a 18 little bit. 19 When you did see draft agreements 20 they weren't sent to you by e-mail, they were 21 handed to you in hard copy; is that right? 22 A. Of my contract. This Exhibit 101 23 that you have handed to me, they never would 24 have sent me contract terms for Bart McDade, 25 Eric Felder, Jerry Donini, who were either TSG Reporting - Worldwide (877) 702-9580</p>

<p style="text-align: right;">Page 54</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 people at my level or above me. I never would 3 have seen this information.</p> <p>4 Q. With respect to your contract offer, your contract documents --</p> <p>5 A. They would have -- the practice 6 was to hand you a written agreement. I was in 7 Europe. I went to Texas for the weekend. 8 Came back. So this -- my actual contract 9 caught up with me some sometime after the 10 fact.</p> <p>11 Q. After the 22nd.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 (Deposition Exhibit 102, document bearing production number BCI-EX-(S)-00003505, marked for identification as of this date.)</p> <p>15 (Deposition Exhibit 103, document bearing production numbers BCI-EX-00077338 through BCI-EX-00077340, marked for identification as of this date.)</p> <p>16 MR. STERN: After you get through 17 these maybe we'll take a short break.</p> <p>18 TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 55</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 MR. GAFFEY: Yeah. It would be 3 good to take a break.</p> <p>4 BY MR. GAFFEY:</p> <p>5 Q. Mr. McGee, I put two documents before you, one marked Exhibit 102, a one-page e-mail bearing Bates number BCI-EX-(S)-00003505, and the other a three-page document bearing Bates number BCI-EX 000077338 through -340 proving Mr. Stern has a better Bates numbering system than I do.</p> <p>6 Have you seen either of those documents before?</p> <p>7 A. The -- yes. The item 103 is the 8 contract that I ultimately signed.</p> <p>9 Q. And that is your signature on the last page?</p> <p>10 A. That is my signature on page 3.</p> <p>11 Q. And it appears to have been dated on October 7th, 2008. Did you put that date in there when you signed it?</p> <p>12 A. Yes, I did.</p> <p>13 Q. Okay. That's your handwriting?</p> <p>14 A. Yes, it is.</p> <p>15 TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 56</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL</p> <p>2 Q. And does this document accurately state your compensation agreement with Barclays for employment that commenced on September 22nd, 2008? I'm making note of the start date in the document.</p> <p>3 A. Yes, it does.</p> <p>4 Q. Now, if you would take a look at Exhibit 102, Mr. McGee, that's an e-mail from you to an address called Accept Barclays Offer.</p> <p>5 Do you recall sending this document?</p> <p>6 A. I don't recall specifically but my assumption is that there was a central clearinghouse that you had to send an e-mail into to basically say you're in or not. I didn't have my contract yet. But I thought it was important for me to be shown as in the -- you know, in the list of -- I didn't want to continue showing up on the list of people who were not "in." I think that is my recollection.</p> <p>7 Q. As I understand it, for the transferred employees there was a sort of</p> <p>8 TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 57</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL</p> <p>2 default. If you didn't say yes at a certain 3 point you would be deemed to say no. So you 4 had to say yes to a website of some kind.</p> <p>5 A. There was some sort of an e-mail 6 that went into some sort of a central thing 7 and I still didn't have my contract because 8 obviously that wasn't signed until a couple of 9 weeks later. But I had a handshake deal with 10 Bob Diamond. I had no reason to not believe 11 that at some point the -- you know, a contract 12 in line with the handshake deal would come 13 forth.</p> <p>14 Q. When did you reach the handshake deal?</p> <p>15 A. That night.</p> <p>16 Q. Was the handshake deal on the numbers that are shown --</p> <p>17 A. The night that -- you know, that I 18 described earlier, the two conversations. It 19 was the Monday night, whatever night that was.</p> <p>20 Q. That's Monday, the 15th?</p> <p>21 A. That would be Monday, the 15th.</p> <p>22 REDACTED</p> <p>23 TSG Reporting - Worldwide (877) 702-9580</p>

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Q. Okay.

7

MR. GAFFEY: This is a good time
for a break.

9

10

MR. STERN: Yeah. Let's take a
short break. Good.

11

(Recess taken.)

12 BY MR. GAFFEY:

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REDACTED

Q. Okay. Now, when you were involved in the negotiations of the asset purchase agreement, we spoke a while before the break about aspects of that agreement that covered compensation to transferred employees.

Do you recall that?

A. Yes.

Q. And that was a part of the agreement that you were involved in, correct?

A. Correct.

Q. Okay. And do you recall that there was a pool set aside, an amount of money set aside for Barclays to pay transferred employees in respect of their '08 Lehman --

MR. STERN: Objection to the form.

Q. -- compensation?

MR. STERN: Can I hear the question again?

MR. GAFFEY: I can rephrase it.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Never mind. Withdrawn.
3 Q. As best you recall, sir, what
4 aspects of the asset purchase agreement
5 addressed compensation to be paid by Barclays
6 to Lehman employees? Describe them as best
7 you remember.

8 A. There was a provision in the
9 contract that dealt with compensation and how
10 continuing employees were to be treated and
11 how employees who were not continuing
12 employees were to be treated.

13 Q. Do you have any more independent
14 recollection on that?

15 A. No.

16 Q. We'll come to the documents, okay.
17 I'd like to switch topics here and
18 in particular switch time periods and go back
19 to the period in the week prior to the
20 bankruptcy filing, okay? If you could...

21 And I think you mentioned to me
22 this morning that you had some involvement
23 going back as far as March but certainly in
24 the week before that looking for transactions
25 with Bank of America, with Barclays, other

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. Have you seen the document before,
3 sir?

4 A. If I've seen it I don't remember
5 it.

6 Q. The document appears to be an
7 e-mail from Brad Whitman to you and others if
8 you take a look at the first page. Who's Brad
9 Whitman?

10 A. Brad Whitman worked for Lehman
11 Brothers. He was an M&A banker focused on
12 FIG. Financial institutions.

13 Q. Did he report to you, directly or
14 indirectly?

15 A. Indirectly.

16 Q. Okay. If you would take a look,
17 please, at the fifth slide in the slide dec
18 that's attached to that e-mail entitled Sales
19 Strategic Investment Process, can I just -- if
20 you don't mind if I come around. I want to
21 make sure we're on the same page here.

22 A. This one (indicating)?

23 Q. Yeah. That's the one.

24 Did the term Green come to your
25 attention as a pseudonym for Lehman in

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 potential transaction parties.
3 Were any investment bankers
4 retained to assist in that during that time
5 period?

6 A. Retained by Lehman Brothers?

7 Q. Yes, sir.

8 A. There was another investment bank
9 that was retained by Lehman Brothers to give
10 an independent point of view to the board.
11 That investment bank was Lazard.

12 MR. GAFFEY: Let's mark this as
13 104.

14 (Deposition Exhibit 104, e-mail
15 dated 9/14/2008 6:15 a.m. with
16 attachments, marked for identification
17 as of this date.)

18 BY MR. GAFFEY:

19 Q. Take a look, Mr. McGee, through
20 the document we've marked as Exhibit 104. Let
21 me know when you've had a chance to do that
22 sufficient to tell me whether you've seen it
23 before.

24 (Document review.)

25 A. Okay.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 materials that were prepared in connection
3 with potential transactions?

4 A. I assume that Green was Lazard's
5 code name for Lehman.

6 Q. Okay. There's a description on
7 this slide of -- well, it says, "Lazard
8 understands Green has contacted approximately
9 30 strategic private equity sovereign wealth
10 institutions over the last three months about
11 a potential investment in or acquisition of
12 Green. Most of the discussions were premised
13 on a separation of Green's commercial real
14 estate assets. Lazard was not asked to
15 solicit interest for Green."

16 And then there are four columns
17 below that denoting particular entities and
18 characterizing them. Active, current
19 discussions, recent inbound inquiries, et
20 cetera.

21 Do you have any independent
22 knowledge, sir, of a program to conduct
23 strategic -- to contact institutions such as
24 those listed on this slide to see if they were
25 interested in a transaction with Lehman?

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 A. Sure.
3 **Q. And you'll note that in the**
4 **left-hand column Barclays and Bank of America**
5 **are listed and described as the active current**
6 **discussions, correct?**
7 A. Correct.
8 **Q. Okay. To the right of that**
9 **there's a series of other entities, CITIC,**
10 **Nomura, Korea, Inc., et cetera, et cetera.**
11 **To your knowledge, sir, were any**
12 **of these entities contacted about interest in**
13 **a potential transaction after the asset**
14 **purchase agreement with Barclays was signed on**
15 **the 16th?**

16 A. To my knowledge, I don't know. I
17 would think that given the fact that through
18 the course of the summer we had been in
19 contact with almost -- because if you go to
20 the next page -- almost every financial
21 institution on the planet, that if one had
22 interest when one saw the transaction
23 announcement one could have -- we had already
24 contacted a very, very significant number of
25 people who for different reasons had not had

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 interest. And -- but I don't know
3 specifically if additional outbound calls were
4 made. I did not make any. As I said, I got
5 on a plane to London trying to see if there
6 was a transaction to be done to put the rest
7 of Lehman Brothers back together.

8 **Q. I'm presuming that while you were**
9 **in London you were in contact with your office**
10 **by phone and by e-mail, right?**

11 A. Correct.

12 **Q. Were you in a position to know --**
13 **withdrawn.**

14 **Did you ever ask during the week**
15 **after the asset purchase agreement was signed**
16 **on September 16th whether the deal was being**
17 **shopped or offered to other parties?**

18 A. I did not specifically ask. I
19 cannot believe that if anybody had any
20 interest why they would not have shown up.
21 And there was no one else there. We had
22 canvassed the world.

23 **Q. When the asset purchase agreement**
24 **was signed, when it was agreed to, did you**
25 **have an understanding of the economics of the**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **transaction that was agreed with Barclays?**
3 A. You'll have to be more specific.
4 What do you mean by economics?

5 **Q. Who paid what for what? What was**
6 **the price given to Barclays?**

7 A. In general, yes. And I'll
8 describe that for you. Specifically, no.
9 In general my understanding was
10 that Barclays was going to buy the building, a
11 couple of data centers, the people, which is
12 really the assets that had value, and, as I
13 stated previously, were evaporating under our
14 feet.

15 And some amount of balance sheet
16 assets which was determined by a separate
17 working group that I'm not familiar with
18 exactly was included in balance sheet items.

19 **Q. Who was the separate working group**
20 **that determined the balance sheet items?**

21 A. The balance sheet items were
22 focused on by Alex Kirk, by Bart McDade, by
23 Mike Gelband. Certainly Ian and Paolo would
24 have been involved as well.

25 **Q. By Ian you mean Ian Lowitt?**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 A. Even Lowitt.
3 **Q. And Paolo is Paolo Tonucci?**
4 A. Paolo Tonucci, yes.
5 **Q. Did you, during the course of --**
6 **excuse me -- during the course of the week**
7 **leading to the closing on the 22nd, did you**
8 **see any work product or analysis generated by**
9 **that working group or people under their**
10 **supervision?**

11 A. Not to my recollection.

12 **Q. Did you have a general**
13 **understanding or do you have one today about**
14 **that -- that's two questions. Withdrawn.**

15 **Did you have a general**
16 **understanding at the time of the value, the**
17 **amount of balance sheet assets, that were**
18 **going to be transferred to Barclays?**

19 A. No.

20 **Q. I may have confused that by**
21 **interrupting myself.**

22 **Let me be clear on time period.**
23 **My question goes to at the time, sir. At the**
24 **time did you have an understanding what**
25 **quantum of balance sheet assets was going to**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 be transferred over to Barclays?
3 A. No, I did not. My understanding
4 was that the structure of the transaction was
5 an asset purchase and there was still work
6 being done to agree on exactly what the assets
7 were to be purchased.

8 **Q. Do you know, sir, if there was any**
9 **discount off the book value of the assets**
10 **transferred, any agreed discount off the book**
11 **value?**

12 A. I was not involved in that process
13 so I have no idea.

14 **Q. Did you review the asset purchase**
15 **agreement when it was finalized and signed?**

16 A. No, I did not.

17 **Q. Have you reviewed it since?**

18 A. No, I have not.

19 **Q. Did anyone ask you to review it at**
20 **the time that it was signed?**

21 A. No.

22 With the exception of the
23 provision relating to compensation and
24 employees.

25 **Q. Okay.**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 (Pause on the record.)
3 **Q. Now, Mr. McGee, I've put before**
4 **you what we previously have marked as**
5 **Deposition Exhibit 1.**

6 **Do you recognize the document?**

7 A. Actually, I don't recognize it.
8 But I take it for what it's labeled to be.

9 **Q. Okay. And that would be the asset**
10 **purchase agreement between Lehman Brothers**
11 **Holdings, Lehman Brothers, Inc., LB 745, LLC**
12 **and Barclays Capital, dated as of September**
13 **16th, 2008?**

14 A. That is what it says on the cover.
15 Yes, sir.

16 **Q. Prior to today, have you ever seen**
17 **this document that we've marked as Exhibit 1?**

18 A. No. Have not.

19 **Q. Would you take a look, please,**
20 **at --**

21 A. Have not seen in it in its
22 entirety. I have seen a provision
23 (indicating).

24 **Q. Okay. You're pointing to a**
25 **provision. Which one are you pointing to?**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **Page 34?**

3 A. Page 34.

4 **Q. Okay.**

5 A. That my counsel has helpfully
6 paged me to.

7 **Q. And page 34 is the beginning of**
8 **Article 9 entitled Employees and Employee**
9 **Benefits, correct?**

10 A. Correct.

11 **Q. And if you would take a look, sir,**
12 **please, through -- you'll note it has three**
13 **subsections, (a), (b), and (c), right?**

14 A. Yes.

15 **Q. Were you involved in the drafting**
16 **or the finalizing of the language in**
17 **Exhibit -- in Section 9.1 of the asset**
18 **purchase agreement?**

19 A. Yes, I was.

20 **Q. Describe for me as best -- with it**
21 **in front of you, describe for me as best you**
22 **remember exactly what your role was in**
23 **drafting or finalizing that language.**

24 A. Again, as I mentioned earlier, I
25 had very real-time and serious concerns about

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 the franchise of Lehman Brothers and
3 preserving some value in that franchise.
4 Headhunters were conducting very aggressive
5 campaigns to hire senior employees, groups of
6 employees, entire industry groups. We had
7 very significant numbers of employees,
8 certainly in investment banking that already
9 had contracts in hand from competitors. And I
10 was worried about the value of Lehman Brothers
11 was about to walk out the front door if this
12 wasn't handled the right way.

13 So I was involved in the
14 discussion of these provisions. Two places
15 where I was the most involved had to do with
16 what would happen with employees who didn't
17 end up having a job, would they be treated
18 fairly and appropriately severed because there
19 was bound to be redundancies and I wanted to
20 make sure that the severance program was
21 consistent with the kind of severance program
22 that Lehman had historically utilized.

23 The second was to make sure that,
24 in fact, there was a bonus pool and bonuses
25 paid for employees because, as I mentioned

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 previously, if you're a senior employee you
3 work for a salary which is ultimately a
4 fraction of your compensation and it's about
5 the year-end bonus or year-end compensation.

6 And if we didn't have -- if we did
7 not have an adequate answer to this question I
8 worried about our ability to retain the
9 franchise represented by the employees.

10 Q. Are you finished with your answer,
11 sir?

12 A. Yes.

13 Q. Okay. Why were you worried about
14 Barclays' ability to retain employees after
15 the transaction? Why was that a matter of
16 concern to you?

17 A. Because if we couldn't represent
18 to the employees that there was a program to
19 take care of them they were going to leave.
20 They had offers away.

21 Q. Okay. And --

22 A. And without employees the client
23 relationships, the -- there's no value to the
24 business. At least that was my view.

25 Q. Do you know if any part of the

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 sale of assets; the building, the two data
3 centers, the balance sheet assets.

4 Can you describe for me what
5 interest Lehman Brothers Holdings or Lehman
6 Brothers, Inc. would have in the continued
7 viability of the franchise after Barclays
8 bought those assets?

9 THE WITNESS: Could you repeat the
10 question.

11 (Record read.)

12 A. Well, I can't speculate as to what
13 their interests are or should have been but I
14 would -- I would assume that one would be
15 interested in the franchise staying intact
16 through the transaction so that the purchaser
17 actually carried through with the transaction
18 and actually purchased.

19 If there was no franchise, if
20 there was no people and most of the key
21 employees had left to go do other things and
22 the only employees that were remaining were
23 those that generally couldn't find
24 opportunities elsewhere, I would think that
25 what was there for any potential purchaser was

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 consideration paid in the asset purchase
3 agreement was consideration paid for the
4 franchise value of Lehman?

5 A. My understanding was that there
6 was a "goodwill" number that was included in
7 the transaction.

8 Q. Can you remember what the
9 "goodwill" number was?

10 A. 250 million was what I had heard.

11 Q. And did you have a view at the
12 time as to whether the Lehman franchise was
13 worth \$250 million?

14 MR. STERN: Objection to the form.

15 A. I would say that that's a very
16 difficult question to answer. What I would
17 say was that that number was very rapidly
18 speeding to zero. And the more employees --
19 the more key employees that left to go to
20 other firms, it was quite certainly going to
21 zero.

22 Q. Now, when the agreement was being
23 negotiated prior -- the agreement being the
24 asset purchase agreement before it's signed --
25 what's contemplated, as I understand it, is a

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 much less valuable and, therefore, what was
3 then realized in any transaction was much
4 lower.

5 Q. So when you spoke about the
6 severance program before you said there were
7 two main topics that were of concern to you;
8 one was how severed, terminated employees
9 would be treated because there would be
10 redundancies; and the other was the
11 establishment of a bonus pool.

12 Let's talk about the first piece,
13 the severance piece. Is the agreement
14 regarding severance that was reached the one
15 that's reflected in paragraph 9.1(b) of the
16 asset purchase agreement?

17 A. I believe that to be true. I
18 looked at drafts of just this article.

19 Q. Um-hum.

20 A. And worked on some of the
21 language. I didn't reread the entire document
22 as signed. But my understanding is that it
23 was -- that this is consistent.

24 Q. You just said something that went
25 back to the question I asked a few moments ago

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 which is actually what mechanically you were
3 doing. Were you marking up drafts as they
4 came -- from time to time as they came through
5 of this document?

6 A. I looked at a draft of this
7 language along the way and got involved in
8 some discussions to change some of provision
9 (b) and some of provision (c).

10 **Q. Do you recall what provisions of**
11 **subparagraph (b) and subparagraph (c) were the**
12 **subject of changes?**

13 A. Specifically to say that the
14 severance was going to be no less favorable
15 than they would have been entitled to had they
16 been basically under Lehman's program to put
17 it in common language.

18 **Q. No pool was put together to fund**
19 **the severance obligations under 9.1(b); is**
20 **that correct?**

21 MR. STERN: Objection to the form.

22 A. I have no idea. I don't know the
23 answer to that.

24 **Q. When you were speaking before**
25 **about making sure there was a bonus pool tell**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **Q. Did you review any of the work**
3 **that was done with respect to calculating that**
4 **pool?**

5 A. No. No.

6 **Q. And, again, I'm sorry if I'm**
7 **repeating myself or asking you to answer again**
8 **but do you know who was involved in -- you**
9 **know, who signed off on a final number for**
10 **that pool?**

11 A. I don't know. I'm not sure who
12 calculated it.

13 **Q. Would you take a look at paragraph**
14 **9.1(c). It's at page 35 of Exhibit 1.**

15 A. Um-hum.

16 **Q. Let me know when you've had a**
17 **chance to read through the language of that**
18 **section. You don't need to memorize it but I**
19 **want you to familiarize yourself with it**
20 **because I'm going to go to different pieces of**
21 **it.**

22 **(Document review.)**

23 A. Okay.

24 **Q. Now, there's a reference in**
25 **9.1(c), sir, to a financial schedule delivered**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 me what steps, if any, you took to make sure
3 there was a bonus pool.

4 A. There was a calculation made, and
5 I'm not sure by who, to come up with some
6 amount which was a number to represent the
7 accrued compensation liability for the North
8 American business. That was a complicated
9 calculation because normally Lehman was
10 operated as a global business. Investment
11 banking was global. Equities was global. I
12 never -- people never thought about the comp
13 pool as, you know, sub pieces of it. You also
14 had, you know, comp always -- the "comp line"
15 always has other stuff in there besides pure
16 bonus. There's -- severance probably flows
17 through there. There's other benefits. So
18 it's somewhat unclear.

19 But what was important was that
20 there was a defined number that was calculated
21 by somebody, I'm not sure who, that was based
22 on the historical Lehman accruals which I
23 guess were then pro rated through for the
24 balance of the year and to come up with a
25 number.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **to purchaser on September 16th, 2008 and**
3 **initialed by an officer of each of Holdings**
4 **and purchaser defined as "The Accrued '08 FY**
5 **Liability."**

6 **Do you see that?**

7 A. Yes.

8 **Q. Have you ever seen that schedule?**

9 A. No.

10 **Q. Well, do you know how much was --**
11 **do you know how much -- what the amount of the**
12 **accrued '08 FY liability was that was referred**
13 **in to paragraph 9.1(c)?**

14 A. I heard of number of 2 billion.

15 **Q. And who did you hear that number**
16 **from?**

17 A. I don't recall.

18 **Q. And did you hear it at or around**
19 **the time the asset purchase agreement was**
20 **being finalized and signed or at some**
21 **subsequent time?**

22 A. I'm not sure. I think I heard it
23 at or -- I may have heard it at or about the
24 time but I'm not positive.

25 **Q. Well, when you were --**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 A. And I'm not sure exactly what was
3 in the two.

4 **Q. When you were working on these two**
5 **pieces, you know, severance and bonus,**
6 **wouldn't you have -- I mean, once you got the**
7 **agreement in place to actually pay the**
8 **bonuses, wouldn't you have been concerned to**
9 **see that the bonus pool was enough?**

10 A. My understanding was based on how
11 the number was calculated that it took the
12 accrual year-to-date, grossed it up, reflected
13 the subset of the employees that were part of
14 this transaction, that it would be the right
15 number, but I didn't know how exactly what
16 was -- exactly was included in all this
17 stuff.

18 **Q. And you don't remember who it was**
19 **that described that formula to you that gave**
20 **you comfort that it was based on the accrued**
21 **bonus -- the accrued liability for bonuses on**
22 **Lehman's books?**

23 MR. STERN: Objection to the form.

24 A. No. I don't recall.

25 **Q. I'm giving you a copy of a**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 from the prior deposition?

3 **Q. Actually, no. Without reference**
4 **to that because you've told me you'd never**
5 **seen that before and you can't tell me if it**
6 **has anything to do with 9.1(c). So I'm really**
7 **talking about what's referred to in paragraph**
8 **9.1(c).**

9 **Just for clarity, since -- I beg**
10 **your pardon. Since you've asked for that**
11 **clarification, let me ask you both questions**
12 **again.**

13 A. Okay.

14 **Q. Solely with respect to the**
15 **language of 9.1(c), do you know if the '08**
16 **liability referred to in that section was**
17 **inflated for the purposes of September 16th,**
18 **2008 asset purchase agreement?**

19 A. When you say inflated, do you mean
20 to -- grossed up to reflect a full year or do
21 you --

22 **Q. No, I'm --**

23 A. Because I -- or do you mean
24 inflated as not reflective of the number that
25 was in the -- supposedly in the books and

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 document, Mr. McGee, that was marked as
3 Exhibit 19 at a prior deposition. Have you
4 ever seen that document before?

5 A. No. Not to my recollection.

6 **Q. Would you be able to tell me one**
7 **way or the other whether this is the financial**
8 **schedule referred to in paragraph 9.1(c) of**
9 **the asset purchase agreement?**

10 A. I can't comment one way or the
11 other.

12 **Q. Do you know if in the process of**
13 **calculating the accrued liability for bonuses**
14 **on Lehman's books that number was overstated**
15 **in connection with the asset purchase**
16 **agreement?**

17 A. I have no way of knowing.

18 **Q. If you wanted an answer to that**
19 **question who would you ask amongst the former**
20 **Lehman employees?**

21 A. And the question being again?

22 **Q. Whether the accrual for bonus**
23 **liability that's referred to in paragraph**
24 **9.1(c) was inflated.**

25 A. And as reflected on Exhibit 19

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 records of Lehman Brothers?

3 **Q. The latter.**

4 A. I have no knowledge that --

5 **Q. And my second question was who**
6 **would ask you within the group of former**
7 **Lehman employees if you wanted an answer to**
8 **that question?**

9 A. People that were responsible for
10 accruals on the balance sheet starting with
11 Ian Lowitt and Paolo Tonucci.

12 **Q. Do you know Martin Kelly?**

13 A. Yes.

14 **Q. Who is Martin Kelly?**

15 A. He works in the finance and
16 accounting area for Lehman.

17 **Q. To whom did he report at Lehman?**

18 A. I'm not exactly sure. Maybe Ian.
19 But I'm not positive.

20 (Pause on the record.)

21 **Q. Do you recall, sir, if you knew --**
22 **after the asset purchase agreement was signed**
23 **but before the deal was closed on the 22nd, if**
24 **you knew what the amount of the pool was that**
25 **we've been talking about established under**

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<p style="text-align: right;">Page 86</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Article 8 of the APA? 3 A. Define the pool for me. 4 Q. You made reference before to a 5 bonus pool. 6 A. Correct. 7 Q. Did you know at the time, even if 8 you don't remember now, what the amount was? 9 A. There's an accrual that's 10 referenced. Unclear to me exactly what is 11 included in the accrual. 12 Q. Um-hum. 13 A. A portion of the accrual I assume 14 is a year-end bonus pool. A portion of it is 15 an accrual for remaining salaries. A portion 16 of it is accrual for other comp and benefits. 17 Probably a portion of it is an accrual for 18 estimated severance. So unclear when you say 19 the pool, exactly which part of these accruals 20 that you're referring to. 21 MR. GAFFEY: Mark that, please. 22 (Deposition Exhibit 105, document 23 bearing production number 10321888, 24 marked for identification as of this 25 date.)</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 87</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 BY MR. GAFFEY: 3 Q. We've marked as Deposition 4 Exhibit 105, Mr. McGee, a one-page document. 5 It appears to be an e-mail from you dated 6 September 18th, 2008 8:01 a.m. GMT to Anthony 7 Collerton. Subject, Confidential. 8 Take a look at this document. 9 Tell me if you recall seeing it before. 10 A. It's an e-mail that I sent. That 11 is correct. 12 MR. STERN: Take a look at the 13 e-mails starting at the bottom. 14 (Document review.) 15 Q. Have you had a chance to look 16 through the document? 17 A. Um-hum. 18 Q. And the top e-mail is from you to 19 Anthony Collerton. Who is Anthony Collerton? 20 A. He worked in HR for Lehman 21 Brothers. 22 Q. And in your e-mail to Mr. 23 Collerton you ask this question: "Of the 2 24 billion number, what is share for IBD?" 25 Do you know what \$2 billion number TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 88</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 you were referring to when you wrote that 3 e-mail to Mr. Collerton on September 18th? 4 A. I believe that to be the 2 billion 5 number that I had heard to be the accrual 6 number. 7 Q. Okay. And you go on in the e-mail 8 to Mr. Collerton to ask, "Is that remaining 9 salary plus year-end bonus?" 10 Do you see that? 11 A. Yes. 12 Q. Did you get an answer to that 13 question? 14 A. No. 15 Q. Do you know the answer as you sit 16 here today? 17 A. No. 18 Q. And then you ask Mr. Collerton, 19 "Does it include the retention or is that 20 separate?" 21 Do you see that? 22 A. Yep. 23 Q. Did you get an answer to that 24 question? 25 A. Nope.</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 89</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Q. Do you have an answer to that as 3 you sit here today? 4 A. No. 5 Q. Did you ever known the answer to 6 either -- any of those three questions? 7 A. No. 8 Q. So looking again at what was 9 marked as Exhibit 19, that's the financial 10 schedule that shows a \$2 billion number for 11 comp, you have -- you can't tell us whether 12 that \$2 billion is for bonuses only, for 13 bonuses and salary, or for bonuses and 14 severance, can you? 15 A. Cannot. 16 Q. Do you have any idea at all? 17 A. No. 18 (Deposition Exhibit 106, e-mail 19 dated 9/17/2008 2:21 p.m., marked for 20 identification as of this date.) 21 BY MR. GAFFEY: 22 Q. Mr. McGee, I've marked as 23 Exhibit 106 a one-page e-mail from Ajay Nagpal 24 to Bart McDade, Michael Gelband, Gerald 25 Donini, Thomas Humphrey, yourself, Eric Felder</p> <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p>

1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 and Hyung Lee.

3 **Have you seen this e-mail before?**
4 A. I see that I'm listed as one of
5 the addressees. I don't recall it. I'm
6 reading it now.

7 (Document review.)
8 A. Okay. I've read it.

9 **Q. Having read through it does it**
10 **refresh your recollection as to whether you've**
11 **seen it prior to today?**

12 A. It appears I received this. I
13 can't recall receiving this specific e-mail
14 but I get hundreds every day and there's lots
15 of days between now and then.

16 **Q. Okay. You can put that e-mail**
17 **aside then.**

18 (Pause on the record.)

19 **Q. Could you take from the pile in**
20 **front of you, please, Mr. McGee, Exhibit 103.**
21 **It's your signed --**

22 A. Contract.

23 **Q. -- contract. And you also need in**
24 **front of you the asset purchase agreement.**

25 A. Okay.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 **Q. Now, having been involved in the**
3 **drafting of Article 9 of the asset purchase**
4 **agreement you would meet the definition, sir,**
5 **of a transferred employee as it's used in that**
6 **provision, correct?**

7 A. Correct.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 on the 16th, there was one on the 17th, and
3 then there was one on Friday, the 19th.

4 **Did you attend any of those?**

5 A. No.

6 **Q. And remind me, when did you leave**
7 **for London? Wednesday?**

8 A. Wednesday afternoon for Thursday
9 morning.

10 **Q. Okay.**

11 **Did you see any of the filings**
12 **made with the bankruptcy court that described**
13 **the transaction at any point?**

14 A. No.

15 **Q. During the week of September 15th**
16 **there came a point -- did you ever learn that**
17 **during the week of September 5th there came a**
18 **point where Barclays stepped into the shoes of**
19 **the Federal Reserve with respect to a certain**
20 **repurchase agreement concerning Lehman?**

21 MR. STERN: I'm sorry. The
22 date --

23 **Q. Withdraw the question.**

24 **During the week before the**
25 **transaction closed did the existence of a**

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<p style="text-align: right;">Page 94</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 repurchase agreement in connection with the 3 transaction come to your attention? 4 A. No. 5 Q. In any way whatsoever? 6 MR. STERN: Objection to the form. 7 MR. CHEPIGA: I don't know what it 8 means. 9 A. No. I mean, subsequently, I've 10 heard reference to it but at the time, no. 11 And I was out of the country. 12 Q. Apart from counsel, what 13 references have you heard to it subsequently? 14 A. Nothing more than that there was a 15 repurchase agreement that Barclays got 16 involved in. 17 Q. Anything more than that? 18 A. No. 19 Q. Anybody ever talk to you about the 20 use of the repurchase agreement as a means of 21 transferring the assets over to Barclays? 22 A. No. 23 Q. Do you know if the deal that was 24 made on the 16th of September, the one that 25 was signed on Tuesday, the 16th of September, TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 95</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 was, in fact, the deal that was closed on 3 Monday, the 22nd of September that the terms 4 of the deal stayed the same? 5 A. I don't know. 6 Q. Do you know if the terms of the 7 deal changed between the 16th and the 22nd? 8 A. I don't know. 9 Q. Did you attend the closing? 10 A. No. 11 Q. Did you ever see any amendments to 12 the asset purchase agreement that's before you 13 marked as Exhibit 1? 14 A. No. 15 Q. Did it ever come to your attention 16 that there were any amendments to the asset 17 purchase agreement? 18 A. Maybe after the fact. 19 Q. By after the fact you mean after 20 the closing? 21 A. Yes. 22 Q. In what manner did that come to 23 your attention? 24 A. It might have been around this 25 process. I don't recall. But I don't feel TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: right;">Page 96</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 like I can say I never heard that there were 3 any changes. 4 Q. Yeah, and I appreciate that. What 5 I want to do is focus on from the 22nd of 6 September and prior. 7 A. Okay. I had not. No. I had not. 8 Q. Have you ever heard about the 9 execution of a clarification letter concerning 10 the asset purchase agreement? 11 A. No. 12 Q. So I take it you were not involved 13 in the negotiation of any such clarification 14 letter. 15 A. That is correct. 16 Q. And had you heard about the 17 existence or the drafting or the negotiation 18 of such a clarification letter in the week 19 prior to the closing on the 22nd? 20 A. I had not. 21 Q. Did it ever come to your 22 attention, Mr. McGee, that Barclays announced 23 a certain gain upon the acquisition of the 24 Lehman assets? 25 A. That Barclays announced --</p>	<p style="text-align: right;">Page 97</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Q. A gain on acquisition. 3 A. When would such announcement have 4 been made? 5 Q. I'll show you a document. 6 (Pause on the record.) 7 Q. Mr. McGee, I've put in front of 8 you what was previously marked as Deposition 9 Exhibit 22 entitled Barclays PLC Results 10 Announcement Figures 2008. 11 Let me ask you first, have you 12 seen this before? 13 A. I have -- I have seen it but I 14 haven't read all the footnotes. 15 Q. Okay. Well, let me show you -- 16 I'm not going to ask you to read them all but 17 I am going to ask to you take a look at page 18 95. 19 A. Okay. 20 Q. There's a section -- there's a 21 note there entitled Acquisitions and in the 22 second-to-last paragraph do you see the phrase 23 "The excess of the fair value..." 24 A. Yeah. 25 Q. It says "The excess of the fair TSG Reporting - Worldwide (877) 702-9580</p>

1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 value of net assets acquired over
3 consideration paid resulted in 2,262,000,000
4 pounds of gains on acquisition."

5 Do you see that?

6 A. Yes, I do.

7 **Q. Did that announcement of a gain on**
8 **acquisition of the Lehman assets come to your**
9 **attention at or around the time Barclays made**
10 **this announcement?**

11 A. I saw it in the -- I saw it picked
12 up by the press and other places, yes.

13 **Q. And when you saw it picked up by**
14 **the press and in other places, did you have a**
15 **view as to whether it was consistent or**
16 **inconsistent with the terms of the transaction**
17 **in which you were involved in September of**
18 **2008?**

19 A. My sense is it was consistent with
20 the environment in which the transaction was
21 consummated; that it was the absolute worst
22 financial crisis anyone had ever seen, the
23 fact that somebody bought assets, any assets
24 at the very bottom, they were probably going
25 to ultimately earn a return on having stepped

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 the people, gets the assets, on September
3 22nd, 2008.

4 A. Correct.

5 **Q. As we sit here today Barclays has**
6 **had some opportunity to operate businesses**
7 **using those people and those assets and those**
8 **other facilities that were transferred to it,**
9 **correct?**

10 A. Right.

11 **Q. Barclays will have had over that**
12 **period of time as we sit here today some**
13 **degree of success or lack of success using**
14 **those assets and people and facilities, right?**

15 A. Correct.

16 **Q. My question has nothing to do with**
17 **any of that. My question has to do with**
18 **whether or not Barclays made a gain at the**
19 **moment it acquired the assets.**

20 A. Are these financial -- I thought
21 these financial estimates were as of December
22 31st.

23 **Q. I'm just asking you, sir, whether**
24 **it was your understanding that Barclays would**
25 **make a gain at the moment it acquired the**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 up.
3 **Q. And when you say ultimately earn a**
4 **return, do you mean that over the longer term**
5 **make better use of those assets to return**
6 **profit?**

7 A. Perhaps ultimately is a bad term.
8 It's not surprising to me that there was a
9 gain if that's what you're asking me.

10 **Q. Would it be surprising to you that**
11 **there was a gain on acquisition? At the point**
12 **of acquisition.**

13 A. I'm not so sure that's what this
14 says.

15 **Q. Well, where it says there "on**
16 **acquisition" that's what I'm talking about.**
17 **Would it surprise you that there was a gain**
18 **"on acquisition"?**

19 A. I'm not sure I understand you.
20 MR. STERN: If you don't
21 understand the question --

22 **Q. Do you understand the question?**

23 A. No, I don't.

24 **Q. Okay. Barclays purchases the**
25 **assets - as you put it, the franchise - gets**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 assets.

3 A. As I said before, I was not
4 involved in the detail around the asset side
5 of the acquisition.

6 **Q. You were involved in the bigger**
7 **picture of negotiation of the transaction,**
8 **correct?**

9 MR. STERN: Objection to the form.

10 A. I think that's a bit too broad. I
11 was involved -- I was involved in trying to
12 facilitate the transaction to try and make
13 sure that we had 48 hours to try to put
14 something together that we didn't forget
15 something. So I'd go around and say, you
16 know, are we buttoned up here, are we going to
17 need this approval, do we have to get these
18 guys. So I was wandering in and out of the
19 rooms. Anything material went to Bart McDade
20 for his sign-off. And anything related to the
21 balance I just wasn't involved in.

22 **Q. We've had more than one witness,**
23 **sir, prior to today describe you as one of the**
24 **principal negotiators of the transaction. Is**
25 **that accurate?**

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<p style="text-align: center;">Page 102</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 MR. STERN: Objection to the form. 3 Objection to the form. 4 A. Of the senior Lehman executives 5 who were there for the entire time frame, you 6 know, two days without sleep, I was one of 7 them. But Bart McDade was my boss and he was 8 there the whole time, too. 9 So -- and in terms of a principal 10 negotiator I've never -- well, this is the 11 wrong document -- but that particular asset 12 purchase -- the only place I really dug in on 13 the language was around the stuff related to 14 the employees because, as I said before, the 15 employee base was -- some of them had one foot 16 out the door already. 17 Q. Okay. 18 MR. GAFFEY: It would be a good 19 time to take a break now because I'm 20 going to move into a body of documents 21 that will take about an hour. So why 22 don't we take a lunch break now. 23 MR. STERN: Let's go off the 24 record. 25 (Discussion held off the record.) <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p></p>	<p style="text-align: center;">Page 103</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 (Luncheon recess taken at 12:22 3 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: center;">Page 104</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 A F T E R N O O N S E S S I O N 3 (Time noted: 1:07 p.m.) 4 H U G H M c G E E , resumed and testified 5 as follows: 6 EXAMINATION BY (Cont'd.) 7 MR. GAFFEY: 8 Q. Let's go back on the record. I 9 know you were in London during the week, Mr. 10 McGee, but did it come to your attention 11 during the week between the 15th and the 22nd 12 at any point that a problem had arisen and 13 that Lehman would not be able to deliver to 14 Barclay the assets promised in the asset 15 purchase agreement? 16 A. No. It did not. 17 Q. Did it ever come to your attention 18 that at the sale hearing that took place 19 before Judge Peck on Friday, the 19th of 20 September, the court was told that the value 21 of the assets to be transferred had fallen? 22 A. I was not aware of that. 23 Q. Did you have any knowledge of any 24 efforts being undertaken by folks at Lehman to 25 find additional assets to send to Barclays? <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p></p>	<p style="text-align: center;">Page 105</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 A. No. 3 Q. Has that -- have any facts 4 concerning those questions come to your 5 attention since the closing? I mean, since 6 you've been at Barclays. 7 A. Any facts concerning -- well, I've 8 heard generally about some of that but, you 9 know, I'm not -- was not in the middle of it. 10 Q. In your time at -- have you been 11 working at Barclays more or less continuously 12 since September 22nd? That was the start date 13 on your employment agreement. 14 A. Yes. 15 Q. And in your time at Barclays since 16 September 22nd -- let me back up. I need to 17 ask you this. 18 Did you start before or after the 19 closing? Working for Barclays. 20 A. Well, I view working -- prior to 21 the closing I was working to preserve the 22 franchise which I viewed as working very much 23 for Lehman Brothers to try and preserve value 24 that could actually be closable against. 25 After the closing -- I mean, I</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>

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2 didn't just go away and come back. I mean, I
3 kept working but it was all the -- it was on
4 the same thing, trying to keep -- trying to
5 keep the people -- you know, it was herding
6 cats. I mean, it was --

7 Q. That's what your activities in
8 the -- at least in the immediate
9 post-transaction days are still devoted to
10 keeping the team together.

11 A. Correct.

12 Q. Keeping the personnel to come over
13 and work at Barclays, yes?

14 A. Right. Right.

15 Q. In your time at Barclays since
16 September 22nd, 2008, have you had discussions
17 with Barclays personnel, that is people who
18 never worked at Lehman, where they've
19 expressed a view to you about whether the deal
20 was a good one or a bad one for Barclays?

21 A. Oh, I think everybody who was a
22 historical Barclays employee looks at the
23 franchise that they had and now the franchise
24 that they have today, the capabilities, the
25 skill set, the reach, the product set, and

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 18th, 2008 from Tim Sullivan to you entitled
3 "Balance sheet that you and Archie signed."

4 A. Um-hum.

5 Q. Was there a balance sheet that you
6 and Archie signed?

7 A. No. There was not.

8 Q. Looking at this document, do you
9 recall receiving this document at or around
10 the time it's dated?

11 A. It's easy to read it and see it
12 was addressed to me from Tim Sullivan. He
13 worked directly for me. This was sent to me
14 no doubt while I was in London. And
15 apparently people were looking around for a
16 document but I never signed any sort of
17 balance sheet.

18 Q. Do you have any recollection --
19 and, again, I know you're in London at the
20 time but you talked to me before the lunch
21 break a fair bit about your main focus being
22 the compensation side of things, the human
23 capital as you put it, moving over to
24 Barclays.

25 Do you have any recollection of

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2 feels that the company is -- and I think the
3 company's own public pronouncements describes
4 the combination as transformational.

5 Q. I'm more interested in what's
6 being said internally as opposed to the public
7 pronouncements. Are you -- have you had
8 conversations with senior executives at
9 Barclays where they have said to you in
10 substance that they paid less for the assets
11 than they were worth?

12 A. No.

13 Q. Have you had conversations with
14 senior Barclays executives where they have
15 told you that they got a good bargain on the
16 assets that were transferred?

17 A. No.

18 (Deposition Exhibit 107, document
19 bearing production number 10270027,
20 marked for identification as of this
21 date.)

22 BY MR. GAFFEY:

23 Q. Mr. McGee, I've put in front of
24 you what we've marked as Deposition
25 Exhibit 107, a one-page e-mail dated September

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 being asked about the location of the \$2
3 billion comp liability -- a document that
4 concerned \$2 billion in comp liability?

5 A. No. Just this e-mail.

6 Q. Do you recall receiving it?

7 A. I don't recall it but I clearly --
8 I can see that it's addressed to me but I --
9 you know, until you put this in front of me
10 now I can see that I did receive the e-mail.

11 Q. Apart from the e-mail itself do
12 you have any independent recollection of
13 anybody asking you the whereabouts of a
14 schedule?

15 A. No.

16 Q. Do you have any recollection of
17 any conversation with Tim Sullivan along those
18 lines?

19 A. I can't recall whether I responded
20 to this e-mail or whether I talked to him on
21 the phone but he -- I don't think he ever
22 found the schedule because I never saw one.

23 Q. I want to separate out what you
24 might be inferring from what you know.

25 A. Okay. That's fair.

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<p style="text-align: center;">Page 110</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 Q. Apart from the e-mail, itself, 3 let's just go through this, you never signed a 4 financial schedule. That much you have an 5 independent recollection of, right? 6 A. That is true. 7 Q. As a marginally separate topic do 8 you have any recollection of talking to Tim 9 Sullivan about him thinking you had signed a 10 financial schedule? 11 A. No. 12 Q. Do you have a recollection of 13 talking to anyone about them thinking you had 14 signed a financial schedule? 15 A. No. 16 Q. Was there ever a setting during 17 the week between the 15th of September and the 18 closing on the 22nd of September where you 19 signed anything in connection with the asset 20 purchase agreement? 21 A. Not to my knowledge. 22 Q. Did it ever come to your attention 23 at the time, during that week, did it come to 24 your attention that the schedule -- a schedule 25 that was related to the agreement had gone TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: center;">Page 111</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 missing and people were looking for it? 3 A. No. 4 (Deposition Exhibit 108, document 5 bearing production numbers 10269417, 6 marked for identification as of this 7 date.) 8 BY MR. GAFFEY: 9 Q. We've put in front of you, Mr. 10 McGee, what we've marked as Deposition 11 Exhibit 108. It's a three-page e-mail chain 12 beginning with its earliest one that would be 13 on the last page, September 18th, 2008, from 14 Tim Sullivan and Ros Stephenson and others 15 including you. 16 Let me give you a sec -- why don't 17 you take a look through each portion of that 18 e-mail chain as you go up through the most 19 recent and let me know when you've had a 20 chance to do that. 21 MR. STERN: Before he does that is 22 there any particular part you're going 23 to focus on? 24 MR. GAFFEY: Well, we'll see as we 25 go. TSG Reporting - Worldwide (877) 702-9580</p>
<p style="text-align: center;">Page 112</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 MR. STERN: Okay. 3 MR. GAFFEY: The chances are each 4 piece of it, so spend enough time 5 reading each segment, please. 6 Was that your question Jack? Was 7 there one part of it? 8 MR. STERN: Yes. 9 (Document review.) 10 Q. For clarity I should point out to 11 you that starting on the first page of the 12 document you disappear out of the e-mail chain 13 beginning with the From Parker to Sullivan 14 September 18th, 8:54 p.m. near the bottom of 15 the page. So I'm not going to ask you about 16 what's above that, okay? 17 A. Okay. 18 Q. And if you turn to the last -- the 19 earliest e-mail in the chain, sir, from Larry 20 Wieseneck to Tim Sullivan, Ros Stephenson, and 21 others, c.c.'d to you entitled "Updates for 22 Skip. Skip, PLEASE READ." 23 A. Yes. 24 Q. Do you recall seeing that e-mail 25 from Mr. Wieseneck on the 18th -- around the</p>	<p style="text-align: center;">Page 113</p> <p>1 H. McGEE - HIGHLY CONFIDENTIAL 2 18th of September? 3 A. Well, now, you've asked me to read 4 it. There were a lot of e-mails during this 5 period with similar discussions. So this 6 specific one I don't recall it specifically 7 but... 8 Q. I picked this specific one for a 9 couple reasons. One, it's got that, "Skip 10 PLEASE READ." 11 You're in London at this point, 12 right? 13 A. I'm in London. 14 Q. And the men involved in this 15 e-mail chain are the group we talked about 16 earlier. You know, it's Wieseneck. And then 17 moving up it's Jeffrey Weiss and then moving 18 up it's Paul Parker. 19 A. Um-hum. 20 Q. So I guess my question is given 21 that it's an e-mail amongst these gentlemen 22 who I understand are fairly senior members of 23 IBD -- 24 A. Correct. 25 Q. -- and it concerns an issue that</p>

1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 was of big concern to you, you know, who had
3 bids away and keeping the group together --

4 A. Correct.

5 Q. -- does that help you remember
6 whether or not you saw or focused on this
7 particular e-mail chain?

8 A. I'm sure I saw it.

9 Q. Okay. Apart from seeing it today
10 and being sure you saw it because it's an
11 e-mail, do you have any other independent
12 recollection of it?

13 A. No. Because, as I said, I get a
14 tremendous number of e-mails every day and
15 during that period of time I was getting
16 buried with e-mails just like this because
17 this guy's got a bid away, that guy's got a
18 bid away, this team's got a bid, what are we
19 going to do.

20 Q. Where Mr. Wieseneck writes -- and
21 I'm again at the earliest e-mail at the bottom
22 of the penultimate page, "Basically, the fear
23 is spreading that BARC bought us for nothing
24 and now don't even want to put up the right
25 dollar to pay people. This is the wrong way

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 commentary about the transaction, I mean, the
3 transaction was the transaction. There was no
4 one else there ready to do a transaction. I
5 mean, these people were frustrated that their
6 own teams were disintegrating. I think you
7 can see it through the e-mail chain.

8 Q. Sure. But I guess my question is
9 do you recall a sentiment being expressed by
10 the members of your executive committee that
11 in sum and substance was that Barclays had
12 bought Lehman for nothing?

13 A. Well, whatever the consideration
14 was that traded hands, it was a lot less than
15 what Lehman had been worth, you know, some
16 period before. The stock had gone from \$85 to
17 zero. And so, I mean, I can't comment what
18 was in Larry Wieseneck's mind when he wrote
19 this.

20 Q. Can you comment whether you heard
21 that kind of sentiment from people who worked
22 for and you if so whether you responded to it?

23 A. Well, I think there was a
24 frustration that that is a very understandable
25 human reaction which is when the teams are

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 for them to start if they want to make money
3 on this asset."

4 **Do you recall a sentiment being
5 expressed amongst the people that worked for
6 Barclays had bought Lehman for nothing?**

7 A. Well, this is an e-mail to -- I'm
8 c.c.'d. It's to a group from Larry Wieseneck
9 and you have to understand the dynamic here.
10 They're trying to hold their teams together.
11 These guys hadn't yet signed their agreement,
12 and, oh, by the way, they all -- you showed me
13 an e-mail earlier that had, you know, names
14 and those people on my executive committee.
15 Well, they ultimately all held out for
16 two-year deals. And also had retention. And
17 so it was -- I was a little bit man in the
18 middle because these guys were negotiating
19 their packages a little bit with me. They
20 were negotiating them on behalf of their team.
21 They want more and more and I'm trying to hold
22 the line because it just cascades all the way
23 through.

24 And the ultimate -- I mean, the
25 commentary -- you know, the editorial

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 dissipating and it's a team that's been
3 together for years and years and people have
4 bids here and bids there and we're trying to
5 hold the line on one year and trying to take
6 the overall comp pool down, there was
7 frustration. And they juxtaposed that
8 against, you know, whatever the transaction
9 consideration was. And none of these people
10 were expertized in that in terms of what was
11 the deal. It was a lot less than what Lehman
12 Brothers had been worth three months before,
13 six months before, one year before, you know,
14 whatever.

15 **Q. At this point were you expertized
16 in what consideration was given in the deal?**

17 A. No.

18 **Q. Just to frame it for time
19 reference, Mr. McGee, the questions I'm asking
20 you now go basically to the weekend. The
21 20th, the 21st.**

22 A. Okay.

23 **Q. And into the 22nd. I want those
24 last couple of days before the deal closes.
25 At that point are you close to**

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 finality with Barclays as to what the
3 compensation will be for the members -- for
4 yourself and for the members of your executive
5 committee and --

6 A. No.

7 Q. -- and the other people you're
8 concerned about? Are you getting close to
9 resolution of that?

10 A. No.

11 Q. Is there a point where in the days
12 before the deal closes -- and put it at the
13 Friday, the Saturday, the Sunday, where you
14 begin to get authority from Barclays as to
15 what kind of offers can be made to people?

16 A. No. This was still iterating.

17 Q. Was there a point where you got
18 approval -- prior to the closing of the deal
19 was there a point where you got approval to
20 tell people in investment banking that
21 Barclays would honor all guarantees in your
22 group for a million dollars or more?

23 A. I think you're going to have to
24 give me some more facts around that question.
25 When you say honor guarantees, are you talking

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. And you're aware at the time that
3 there's this group of 200 who Barclays wants
4 to come over or ought to want to come over so
5 they can operate the franchise, right?

6 Apart from you was anyone else
7 talking to Barclays about how to compensate
8 that group of 200 and the of eight?

9 A. I assume that there parallel
10 discussions going on between Jerry Donini and
11 people and Felder and some of his people and
12 that those are being reflected up through
13 chain.

14 Q. And Donini and Felder are division
15 heads as you are, right? Different divisions.

16 A. Correct.

17 Q. With respect to the people for
18 whom you're responsible, that is the folks in
19 the investment banking division, are you
20 close -- at some point do you get an
21 understanding that you've got X-amount of
22 dollars from Barclays to use to make
23 compensation offers to the people in the
24 investment banking division?

25 And again I'm in the period prior

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 about guarantees that were pre-existing Lehman
3 guarantees?

4 Q. You know, I don't know the answer
5 to that. I'll give you a document in a couple
6 minutes. We'll go back to that topic. I
7 mean, I'm pulling that from a document. But I
8 want to be a little more general right now,
9 but we'll --

10 A. Well, there were no new guarantees
11 yet because no contracts had been signed.

12 Q. Okay. That's where I want to go
13 next. And we'll go back and drill down on
14 that. I don't want to just leave that
15 hanging.

16 A. Okay.

17 Q. But are there documents out there?
18 You've got -- let me frame this. You've got
19 these two groups, in essence. You've got the
20 eight critical employees that we've talked
21 about. I know you don't know who's on that
22 list, that was not shared with you. But
23 there's that eight. And then there's the
24 200 -- there's a group of 200, right?

25 A. Correct.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 to the closing.

3 A. Prior to the closing, no.

4 Q. No, okay.

5 I wasn't going to use this

6 document but I promised you I wouldn't leave
7 you hanging so I just want to put some context
8 to that question I asked you about a moment
9 ago.

10 A. Okay. Sure.

11 (Deposition Exhibit 109, document
12 bearing production numbers 01321878,
13 marked for identification as of this
14 date.)

15 BY MR. GAFFEY:

16 Q. Mr. McGee, I've put in front of
17 you an e-mail that I was referring to before
18 and we've marked it as 109. I should point
19 out it's neither addressed to nor from you.
20 It appears to be an e-mail from Michael Evans
21 at Barclays Capital to Tracy Binkley at Lehman
22 with a copy to Anthony Collerton at Lehman
23 entitled "How to handle employees with
24 guarantees."

25 First let me ask you, do you know

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 who Tracy Binkley is?
3 A. Tracy Binkley was the head of HR
4 at Lehman Brothers.
5 **Q. And Michael Evans, what's his role**
6 **at Barclays?**
7 A. He's the head of HR.
8 **Q. I should ask you have you seen**
9 **this e-mail exchange before?**
10 A. No.
11 **Q. You see in it, though, that**
12 **there's a reference to -- and I'm at the**
13 **bottom here. "By the way, my HR person**
14 **covering investment banking tells me that Skip**
15 **McGee, head of IBD, was told that Barclays**
16 **would honor all guarantees of his group for \$1**
17 **million or more. I presume he has begun**
18 **communicating that but don't know. Got this**
19 **info second hand."**
20 **And then further up just to sort**
21 **of relate these two things it says "As for**
22 **Skip saying he has that approval, I'm not**
23 **aware of it."**
24 **Any of this ringing any bells**
25 **about an area of confusion or any**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 BY MR. GAFFEY:
3 **Q. What we've put in front of you,**
4 **Mr. McGee, is marked Exhibit 110. And on its**
5 **top it appears to be an e-mail from you to**
6 **Roger Jenkins at Barclays Capital entitled**
7 **"Current Numbers." And it's got an e-mail**
8 **chain within it. And take a look at the**
9 **e-mail, please, from earliest to latest and**
10 **let me know when you've had a chance to do**
11 **that.**
12 **(Document review.)**
13 A. Okay.
14 **Q. I guess starting at the earliest**
15 **one, Mr. McGee -- well, do you have any**
16 **independent recollection of this e-mail chain?**
17 A. Generally, yes.
18 **Q. Okay. Tell me what your best**
19 **recollection is about the issue that's**
20 **addressed in it and how it came up and how you**
21 **dealt with it.**

22 A. Well, this again relates to trying
23 to pin down the various groups or senior
24 individuals within investment banking and
25 trying to do so with some combination of a

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 **conversations you may have had at around this**
3 **time?**
4 A. No. It's not -- I've never seen
5 this before. There was a concern by some
6 people that had guarantees going into the year
7 2008 with Lehman Brothers as to what was going
8 to be the status of those guarantees.
9 **Q. Once they went over to Barclays.**
10 A. Once they went over to Barclays.
11 **Q. And is that an area that you were**
12 **addressing that you were having conversations**
13 **about during the week?**
14 A. It would have been down the list
15 of priorities. Because that was not a
16 significant population of people nor was it
17 the most significant people.
18 **Q. I'll take that back. I just**
19 **marked that to show you I keep my promises.**
20 A. Okay. Thanks.
21 (Deposition Exhibit 110, document
22 bearing production numbers 10279514,
23 marked for identification as of this
24 date.)
25

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 await, perhaps retention, and hopefully not
3 '09 but in some instances '09 guarantees.
4 And Roger Jenkins was a member of
5 the BarCap Executive Committee who was
6 nominally watching over the process with
7 respect to investment banking. And my
8 assumption is that there were similar
9 processes going on with other divisions. And
10 this had to do with that process.
11 **Q. Was there a point -- there are**
12 **references on the e-mail to -- well, let me**
13 **direct your attention to the second most**
14 **recent e-mail. It's on the first page from**
15 **Jenkins to you.**
16 A. Yes.
17 **Q. Saturday, September 20th, 15:40,**
18 **Re. Current Numbers. It begins, "Skip, we got**
19 **to talk."**
20 A. Yes.
21 **Q. Okay. Mr. Jenkins writes "Skip,**
22 **we got to talk. We are over the pool and**
23 **don't have the money. All comp stuff needs to**
24 **come through me for my sign-off. We are**
25 **working to a clearly defined pool."**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 **Do you know what clearly defined**
3 **pool Mr. Jenkins was referring to when he**
4 **wrote to you on September 20th?**

5 A. No, I did not.

6 **Q. Did you know that on September**
7 **20th there was a clearly defined pool**
8 **available for compensation of investment**
9 **banking division personnel?**

10 A. My understanding was that there
11 was some pool. I didn't know exactly what was
12 in it, how much was in investment banking, how
13 much was in equities.

14 **Q. Okay.**

15 A. And you can see that in the e-mail
16 that I was somewhat frustrated as to -- I
17 didn't really know what the pool was and I was
18 trying to manage this on the one hand with the
19 e-mail chain we just went through a minute ago
20 with all my direct reports who were saying,
21 you know, you got to -- you know, we got bids
22 away, people have two years, et cetera, et
23 cetera. So it was -- there was a bit of
24 frustration in this e-mail chain.

25 **Q. And you ask 00 in your response to**
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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 A. Um-hum.

3 **Q. And I show this to you -- well,**
4 **let me ask you the usual question.**

5 **Do you recall seeing that before?**

6 A. These are e-mails from my e-mail,
7 yes.

8 **Q. You're writing to Mr. Jenkins at**
9 **7:38 p.m. "Yes. Sorry. Plane door shut.**
10 **Will call again in 45 minutes."**

11 **Are you getting on an airplane on**
12 **Saturday night?**

13 A. That would have been an
14 airplane -- yes, I was getting on an airplane.

15 **Q. Okay. And is that your flight**
16 **from London back to New York?**

17 A. No. I think that's a flight -- I
18 think I landed in New York and then was flying
19 on to Texas for the week.

20 **Q. Okay. So you're back in the US on**
21 **Saturday, 7:38 p.m. GMT?**

22 A. I believe so, yes.

23 **Q. Now, if you could go back to**
24 **Exhibit 110.**

25 A. Okay.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 **that e-mail you ask Jenkins, "What is the**
3 **pool?"**

4 **Do you see that?**

5 A. Yes, I see that.

6 **Q. Did you get a response as to what**
7 **the pool was?**

8 A. No.

9 **Q. Now, in the next --**

10 A. Not that I recall. I don't
11 recall.

12 **Q. Are you on your way back from**
13 **London at this point?**

14 A. I am -- yes.

15 **Q. Let me --**

16 A. I believe so.

17 (Deposition Exhibit 111, document
18 bearing production numbers 01279510,
19 marked for identification as of this
20 date.)

21 BY MR. GAFFEY:

22 **Q. Mr. McGee, I've put before you an**
23 **e-mail marked Deposition Exhibit 111. It's**
24 **from you to Roger Jenkins, Saturday, September**
25 **20th, 2008, at 7:38 p.m. GMT.**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 **Q. And that e-mail's about a half**
3 **hour after that.**

4 A. Okay.

5 **Q. And, as you say, there is a degree**
6 **of frustration in this e-mail. You don't know**
7 **what the pool is. You're writing back to**
8 **Jenkins and you say this: "Bob asked me to go**
9 **to London so I did. I'm sorry this is so**
10 **disjointed. Further complicated by the fact**
11 **that our plan keeps changing. I have no idea**
12 **what authority I have or don't have and what**
13 **the boundaries are."**

14 **Do you see that?**

15 A. Um-hum.

16 **Q. Who's the Bob you're referring to**
17 **there?**

18 A. That would be Bob Diamond.

19 **Q. Had Bob Diamond asked you to go to**
20 **London?**

21 A. Well, I think you asked me that
22 earlier and maybe I said that he didn't.

23 Maybe he suggested that I go to London when I
24 was talking about the European piece of
25 Lehman. There was no reason to go to London

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 for this transaction because it didn't -- but
3 I went to -- I was concerned about trying to
4 do the European piece of Lehman and then the
5 Asian piece of Lehman. And Bob had suggested
6 that I head over there.

7 Q. So that's why I raised this
8 because, you know, I did ask you this
9 morning --

10 A. Yeah, I didn't recall that
11 accurately.

12 Q. And is one reason that you went to
13 London to meet with Bob to talk about the
14 compensation for yourself and the people in
15 the investment banking division?

16 A. No. I never saw --

MR. STERN: Objection to the form.

18 A. Well, I never saw Bob when I was
19 in London. I don't even know if he was in
20 London at the time.

21 Q. Do you have -- as you see this
22 e-mail now, do you have a recollection of what
23 it was Bob wanted you in London for?

24 A. I was very focused as we announced
25 the transaction on what were the follow-on

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 European colleagues who were very, very
3 curious as to what did this mean for them. In
4 the context of responding in an e-mail chain
5 to Roger Jenkins I probably said Bob asked me
6 to go to London. Whether he invited me to go
7 or said, Yes, you can go and try to do that,
8 it's probably a little bit of interpretation.

9 Q. There's some frustration in this
10 communication with Jenkins and it's possible
11 you're taking a pop at Jenkins saying here,
12 Look, I'm in London because Bob Diamond asked
13 me to be here?

14 A. Yeah, a little bit of that. And
15 no sleep for the previous week and a half.
16 Hadn't seen my family in a month. You know, I
17 was a little bit frustrated.

18 Q. So do you have a recollection of
19 whether Bob asked you to go to London as you
20 sit here now?

21 A. No, no.

22 Q. While we're getting the document,
23 did you say when you got back from London you
24 went home to Texas?

25 A. Yes.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 plans to try to put the rest of Lehman
3 Brothers back together that the European piece
4 and the Asian piece had gone into separate
5 receivership. So in that context I wanted to
6 go to London and Bob said, Yes, you should go
7 and see, you know, what it is we can do there.
8 Jerry Del Missier did show up while I was in
9 London. We did not travel together nor
10 coordinate our schedules.

11 Q. So when you wrote -- and, again, I
12 just want to get as pinpoint as I can on your
13 memory of this. You write in the e-mail "Bob
14 asked me to London" but I think you just told
15 me you suggested to Bob that you go.

16 Which was it? Did Bob ask you to
17 come to London or did you suggest you go there
18 and he agreed?

19 A. I'm not so sure I understand that
20 there's a significant difference.

21 Q. One's the invitee and the other is
22 invitee. I'm trying to figure out who's who.

23 A. Well, I wanted to go because I
24 wanted to put the transaction together for the
25 European piece and I had a number of our

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 Q. When did you next come back to New
3 York?

4 A. Sunday night.

5 Q. And why did you come back on
6 Sunday night? Did you have a particular
7 meeting you had to be at or place you needed
8 to be?

9 A. Because I always come back to New
10 York on Sunday night.

11 Q. I mean, as opposed to generally
12 being back in the area. Was there any reason
13 to come back Sunday night?

14 A. No.

15 Q. Was it part of the plan to go to
16 the closing the next morning?

17 A. No.

18 Q. When you got back on Sunday did
19 you touch base with other Lehman executives to
20 see where things stood on the deal?

21 A. Not to my recollection.

22 Q. Through that week -- I mean, the
23 sequence I'm getting here -- and, again, this
24 is me making a statement, not asking a
25 question. I just want to put this in context.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 Is that -- your primary focus
3 through the week is what you've called holding
4 the franchise together, dealing with the HR
5 side of things, the human capital side of
6 things.

7 You know the APA is signed -- the
8 asset purchase agreement is signed on the
9 16th. I asked you if you had any knowledge of
10 an amendment or a clarification letter and you
11 don't, right?

12 MR. STERN: Is this a question or
13 statement?

14 MR. GAFFEY: That's a question.

15 MR. STERN: So what is the --

16 A. I had no knowledge of the
17 amendment or clarification letter. My
18 involvement with the asset purchase
19 transaction effectively ended on Tuesday, you
20 know, when the thing was signed. I was not
21 involved in any of the follow-up hearings or
22 whatever else happened after that.

23 Q. Okay. That's a cleaner way to get
24 to where I was bumping along to, yes.

25 A. And so what I was focused on was

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 that we had employees again that were -- and I
3 know I keep repeating myself -- but that -- in
4 my business in particular people had lost
5 their entire net worth. They had all of a
6 sudden become vulnerable to being hired by
7 other firms. Other firms viewed this -- we're
8 still in the first part of the week so we
9 didn't yet have financial Armageddon when
10 things were still good and they were putting
11 very attractive proposals in front of our
12 people, I was afraid we were going to show up
13 at closing and we weren't going to have any
14 employees and there was going to be no closing
15 and there would be nothing left for the
16 creditors.

17 Q. During that week -- you know, from
18 the time the asset purchase agreement is
19 signed --

20 A. Yes.

21 Q. -- through when the closing
22 actually occurs, what if anything are you
23 doing to stay in touch with McDade or whoever
24 else is involved with the negotiation of the
25 deal and making sure that a closing occurs?

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 A. I was not in regular contact. I
3 just assumed that somebody would call me if
4 they needed me for something.

5 Q. So when you got back to the US on
6 Saturday and went home to Texas, did you check
7 in by phone when you got there with anybody to
8 say How's it looking, did we close, is the
9 deal going to close? Did you check in with
10 anybody along those lines?

11 A. I'm sure I did but I can't recall
12 specifically.

13 Q. And did you have a sense when you
14 got back of when the closing was going to
15 occur?

16 Well, withdrawn.

17 When you left for London did you
18 have an idea of when the deal was supposed to
19 close?

20 A. I had a sense that the time line
21 was that weekend but I don't know specifically
22 when.

23 Q. So when you got back on that
24 weekend did you ask anybody did the deal
25 close?

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1 **H. McGEE - HIGHLY CONFIDENTIAL**

2 A. I'm sure I did because I remember
3 getting e-mails kind of play-by-play as to
4 what was going on in a hearing. And I can't
5 remember when that was.

6 Q. And did you find out when you got
7 back whether or not the deal had closed right
8 after the hearing? I don't mean to be --

9 A. I don't recall.

10 Q. Let me withdraw the question.

11 A. I don't recall.

12 Q. The closing doesn't happen till
13 the Monday. We know that, right?

14 A. Okay.

15 Q. Okay. When you get back on the
16 weekend are you surprised to find out it
17 hasn't closed yet?

18 A. No.

19 Q. Did you ask anybody when the
20 closing was going to be?

21 A. I'm sure I did but I can't recall.

22 Q. Any recollection of who you spoke
23 to?

24 A. No.

25 Q. And when you say you're sure you

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 did is that because you had a sense that it
3 was an important deal in your life at the time
4 and you must have asked or you have a vague
5 recollection of asking someone?

6 A. The former. It was important --
7 I'm sure I would have asked but I can't recall
8 who I would have asked.

9 (Deposition Exhibit 112, document
10 with the first page bearing production
11 number 10269342, marked for
12 identification as of this date.)

13 BY MR. GAFFEY:

14 **Q. Mr. McGee, I've put before you an**
15 e-mail and attachments which we've annotated
16 Deposition Exhibit 112. It appears to be an
17 e-mail from Ros Stephenson sent Sunday,
18 September 21st, at 9:15 p.m. to you,
19 Wieseneck, Weiss, Parker, and Gatto, subject
20 BarCap 200 Template.

21 MR. STERN: I'll just note again
22 that we have the same issue with
23 non-sequential numbers.

24 **Q. Have you seen that document**
25 **before?**

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 draft, the prior draft if there was one or a
3 later draft, I have no idea. This thing was
4 modified a number of times along the way and I
5 don't know -- I mean, people signed -- people
6 ultimately signed a final agreement that had a
7 lot of these provisions, but were -- you know,
8 there were some changes along the way.

9 **Q. There's a reference in the e-mail**
10 **from Mr. Stephenson to you. It's the last**
11 **sentence of the first paragraph it says, "We**
12 **should keep a master list."**

13 **Do you know if a master list was**
14 **kept?**

15 A. No. I don't know.
16 (Pause on the record.)

17 MR. GAFFEY: I have good news and
18 bad news which is that I'm done with
19 questions but all these people might
20 have a couple so -- but thank you for
21 your time.

22 THE WITNESS: Okay. Thank you.

23 MR. ROTHMAN: Can we take a quick
24 break?

25 MR. STERN: If you'd like to, yes.

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 A. I don't specifically recall.
3 **Q. Do you recall a template, a form**
4 **of employment agreement, Barclays Capital**
5 **employment agreement being circulated on this**
6 **Sunday night?**

7 A. I don't specifically recall on
8 that Sunday night. But there certainly were
9 drafts of form employment agreements that were
10 being circulated and there was discussion as
11 to some of the specific terms.

12 **Q. Do you know if there was a**
13 **distribution of offer letters made to a**
14 **population of people within -- withdrawn.**

15 **Do you know if there was a**
16 **distribution of an offer letter in this format**
17 **made to employees of the investment banking**
18 **division?**

19 A. When?

20 **Q. That would be my next question.**
21 **Do you know if one was sent out?**

22 A. Well, there were -- there
23 definitely were offer letters that were given
24 to selected senior employees of the investment
25 banking division. Whether they were of this

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1 **H. McGEE - HIGHLY CONFIDENTIAL**
2 (Recess taken.)
3 EXAMINATION BY
4 MR. ROTHMAN:

5 **Q. Mr. McGee, my name is Seth**
6 **Rothman. I'm a lawyer at Hughes Hubbard &**
7 **Reed. We represent the trustee who was**
8 **appointed under the SIPA Act to liquidate the**
9 **affairs of LBI.**

10 A. Okay.

11 **Q. You described your role in the**
12 **transaction or what you were doing to Mr.**
13 **Gaffey a moment ago as herding cats; is that**
14 **correct?**

15 MR. STERN: Objection to the form.

16 A. I think I used the term herding
17 cats as descriptive of my effort to round up
18 the various investment bankers who were off
19 negotiating all their separate deals with
20 different companies. In terms of my role in
21 the transaction I was trying to serve as a
22 facilitator to try and keep an eye on the
23 overall picture to make sure that there were
24 not things that we were forgetting as we sped,
25 you know, around the clock to try and get this

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 thing done.

3 **Q. Did Lehman have an office in**
4 **Houston?**

5 A. Lehman did and still does have an
6 office -- or Barclay does have an office in
7 Houston.

8 **Q. And some of the investment bankers**
9 **you were in touch with were people in that**
10 **Houston office?**

11 A. That's correct.

12 **Q. Do you know who Gregory Pipkin is?**

13 A. Yes, I do.

14 **Q. Who was he or what was his role?**

15 A. He's a managing director in the
16 nature resources group. The nature resources
17 group is one of the stronger groups at Lehman
18 Brothers and there's bankers in Houston and
19 bankers in New York for purposes of this
20 transaction.

21 **Q. And did you speak to Mr. Pipkin**
22 **about retaining people in the Houston office?**

23 A. Yes.

24 **Q. Did Mr. Pipkin ever tell you that**
25 **Bob Diamond stole Lehman?**

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2 Lee Jacobe and to you and it's dated
3 September 18, 2008.

4 (Deposition Exhibit 113, e-mail
5 dated Thursday, 9/18/2008, 9:55:41 a.m.,
6 marked for identification as of this
7 date.)

8 (Document review.)

9 A. Okay. I've read it.

10 **Q. Have you ever seen this e-mail**
11 **before?**

12 A. It's addressed to me from Pipkin
13 so, yeah, I assume I received it.

14 **Q. And do you recall the issue that**
15 **Mr. Pipkin and Mr. Jacobe in earlier e-mails**
16 **in the chain are discussing?**

17 A. Well, there's a couple of
18 different issues here. The New York energy
19 team, which was Grant and Carlos, are the
20 senior guys there, had separately been out
21 marketing the entire energy group as a
22 franchise to -- I may have the groups wrong --
23 to JPMorgan and Citi and had bids, and the
24 Houston team which viewed itself as perhaps
25 the stronger component of the energy

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2 A. I can't recall whether he did or
3 he didn't. I know that he was focused on
4 making sure that the bankers in Houston and
5 the energy bankers were appropriately taken
6 care of.

7 **Q. Do you know how Mr. Pipkin felt**
8 **about that deal?**

9 MR. STERN: Objection to the form.

10 A. I know how he felt about his
11 ultimate compensation but I don't know how he
12 felt about the deal.

13 **Q. Do you know if he felt that**
14 **Barclays was getting a good deal?**

15 MR. STERN: Objection to the form.

16 A. I'm not -- I'm not sure what I
17 would say about what Mr. Pipkin thought back
18 then. Other than I know that he was very
19 concerned about making sure that there was
20 some sort of a deal for the energy team as a
21 group and that that entire team had a two-year
22 bid away from another firm.

23 MR. ROTHMAN: Let's mark as the
24 next exhibit an e-mail chain. The top
25 e-mail is an e-mail from Mr. Pipkin to
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2 franchise, had separately been marketing
3 itself in a different direction.

4 So the other thing is that all of
5 these people had been at Lehman more than five
6 years so they had just seen at least two and a
7 half years of earnings go puff and, in fact,
8 probably a much greater percentage of their
9 net worth. And so there's a lot -- there's
10 obviously emotion in all this. And so those
11 are some of the issues that I think are
12 weaving their way through this e-mail chain
13 that you've asked me to read.

14 **Q. Okay. In the top e-mail Mr.**
15 **Pipkin writes to you and Mr. Jacob,** "Bob
16 **Diamond is a former Morgan Stanley guy. He**
17 **has paid for talent many times before. While**
18 **he's still at Lehman he has to pay up for the**
19 **best originating franchise - the Houston**
20 **upstream and midstream verticals."**

21 **When you received this e-mail from**
22 **Mr. Pipkin did you know what that meant?**

23 MR. CHEPIGA: Objection to the
24 form.

25 A. I think Mr. Pipkin wanted more

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2 money.

3 Q. Do you know what he meant when he
4 said Bob Diamond stole Lehman?

5 A. No. I have no idea why he chose
6 that particular phrase.

7 Q. Was that a sentiment you were
8 hearing from other investment bankers?

9 A. No. But I think the concept that
10 the investment bankers had multiple, you know,
11 alternatives in different directions and were
12 ready, willing, and able to walk down the
13 street was a consistent theme in many of the
14 e-mails that Bob had asked me to read.

15 MR. ROTHMAN: Let's mark as
16 Exhibit 112 an e-mail --

17 MR. STERN: This would be 114.

18 MR. ROTHMAN: 114. Thank you.
19 -- from you to Mr. Diamond and Mr.

20 Del Missier at Barclays dated 9/20/2008.

21 (Deposition Exhibit 114, e-mail
22 dated Saturday, 9/20/2008, 6:19:26 a.m.,
23 marked for identification as of this
24 date.)

25 (Document review.)

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2 Barclays and Lehman Brothers contemplated all
3 of Lehman Brothers. That was the deal that
4 did not get approved by the regulators.
5 Lehman Brothers went into bankruptcy and then
6 there was a new construct that people began
7 discussing that Monday morning and then worked
8 through for 48 hours and that got signed up on
9 Tuesday. Wednesday evening I got on a plane
10 to Europe. I thought that if BarCap had an
11 interest in all of Lehman Brothers on Sunday
12 what was different on the following Thursday
13 and that we should try and see if we can put
14 the deal together. I flew over there with
15 that mission in mind and worked with John
16 Winter who was the head of BarCap investment
17 banking for Europe on what I thought was a
18 workable construct to get to a meaningful
19 amount of critical mass in Europe.

20 My thinking then was to run the
21 same play again in Asia. The reason I say a
22 need for speed on all fronts is because in
23 every region it was an absolute free-for-all
24 in terms of people wanting to go after the
25 ex-Lehman employees. A need for a global

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2 A. Okay. I've read it.

3 Q. This is an e-mail you've sent to
4 Mr. Diamond and Mr. Del Missier, correct?

5 A. Yes.

6 Q. Do you recall sending this e-mail?

7 A. It looks like an e-mail I sent,
8 yes.

9 Q. You're sending this Saturday?

10 A. Looks like I sent it from London
11 as I was getting ready to get on the plane
12 back to the States.

13 Q. Okay. Can we walk -- let's walk
14 through the e-mail. Maybe you can explain to
15 me what you were telling them.

16 A. Sure.

17 Q. So the top line you say "Step 1 is
18 done (USA)."

19 What did that refer to?

20 A. Well, again, my -- I say again. I
21 referenced earlier in some responses to the
22 questions from Mr. Gaffey that I had wanted to
23 go Europe to try and see if we could put the
24 deal together for Lehman Brothers Europe.

25 The original transaction between

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2 franchise is -- I mean, I can explain it to
3 you but if you're in the M&A business and the
4 equities business you have to be global. When
5 you're dealing with companies like Pfizer,
6 like AT&T, like Chevron, the discussion
7 doesn't stop at the border. You have to be
8 global.

9 So the fact that we no longer had
10 the global capability in M&A and equities was
11 of real issue to all the bankers that they
12 were asking me to try and, you know, hold on
13 to in the States and a very important issue to
14 them.

15 So that's why I said I need the
16 global franchise.

17 Q. So is step 1 the sale of the
18 Lehman assets in the United States or in North
19 America?

20 A. Yes.

21 Q. And as far as you're concerned
22 that's now completed because you've signed the
23 APA on Tuesday?

24 MR. STERN: Objection to the form.

25 A. Well, yeah. The -- again, let's

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 review what I was doing and what my role was.
3 Step 1 was the deal was signed. I assumed it
4 was going to close. I was not involved at
5 all --

6 **Q. What did you --**

7 MR. STERN: Please let him finish
8 his answer.

9 **Q. Sorry.**

10 A. I assumed that the transaction for
11 the North American business of Lehman Brothers
12 would close. I was very focused on how do we
13 then do a similar transaction for the European
14 business, and then a third transaction for the
15 Asian business. I was very focused on Lehman
16 Brothers had created this franchise over many
17 years which I had spent the last six years
18 building up. I didn't want to see it just go
19 puff in smoke and disappear.

20 **Q. Okay. So what did you mean when
21 you said step 1 was done?**

22 A. What I meant was that there was a
23 deal that was signed and I assumed was going
24 to close. I did not mean in the legal
25 perspective that the deal was closed.

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 get back on offense. What did you mean by
3 that?

4 A. To think about going back and
5 actually focusing on business again and client
6 business and generating revenue. It was more
7 of a personal comment. That from March of '08
8 through that weekend I had done nothing but
9 lurch from crisis to crisis to crisis with
10 Lehman Brothers. And you don't need to hear
11 my tale of woe but it was not a fun period nor
12 was it a financially rewarding period.

13 (Continued on next page to include
14 jurat.)

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1 H. McGEE - HIGHLY CONFIDENTIAL
2 **Q. And if you go back to the e-mail
3 you go on to say, "This deal will go down in
4 history as one of the savviest."**

5 **What did you mean by that?**

6 A. By that I meant that the
7 combination of the BarCap existing platform
8 with product strength and fixed income,
9 commodities, FX, a balance sheet that was
10 bigger and more highly ranked than Lehman
11 Brothers, combined with the Lehman Brothers
12 capability in M&A, equities, and also fixed
13 income was going to create a real powerhouse
14 in the investment banking business, and that
15 BarCap had the intestinal fortitude to
16 actually step in and do a transaction when
17 everyone else in the world said no.

18 **Q. And you were congratulating Mr.
19 Diamond and Mr. Del Missier on doing that
20 transaction, correct?**

21 A. Although, as you've already
22 pointed out, the deal had not yet closed, yes.
23 So prematurely I assumed it was going to get
24 to a closing at some point.

25 **Q. Then you say you were excited to**

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1 H. McGEE - HIGHLY CONFIDENTIAL

2
3 So it was going to be -- I was
4 looking forward to getting back to actually
5 doing investment banking business, working on
6 deals, calling on clients, things like that.
7 So that's what that meant. More of a personal
8 commentary.

9 MR. STERN: Anything else?

10 MR. ROTHMAN: I think that's it.

11 MR. STERN: Okay. Thank you very
12 much. We're off the record.

13 (Time Noted: 2:18 p.m.)

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25

HUGH E. McGEE, III

22 Subscribed and sworn to before me
23 this ____ day of _____, 2009.

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<p style="text-align: right;">Page 154</p> <p>1 C E R T I F I C A T E 2 STATE OF NEW YORK) 3 : ss. 4 COUNTY OF NEW YORK) 5 I, FRANCIS X. FREDERICK, a Notary 6 Public within and for the State of New 7 York, do hereby certify: 8 That HUGH E. McGEE, III, the 9 witness whose deposition is hereinbefore 10 set forth, was duly sworn by me and that 11 such deposition is a true record of the 12 testimony given by the witness. 13 I further certify that I am not 14 related to any of the parties to this 15 action by blood or marriage, and that I 16 am in no way interested in the outcome 17 of this matter. 18 IN WITNESS WHEREOF, I have 19 hereunto set my hand this 10th day of 20 August, 2009.</p> <p style="text-align: center;">22</p> <p style="text-align: center;">23</p> <p style="text-align: center;">24 FRANCIS X. FREDERICK</p> <p style="text-align: center;">25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 155</p> <p>1 2 ----- I N D E X ----- 3 WITNESS EXAMINATION BY PAGE 4 HUGH E. McGEE, III MR. GAFFEY 6 5 MR. ROTHSCHILD 141 6 7 ----- INFORMATION REQUESTS ----- 8 DIRECTIONS: NONE 9 RULINGS: NONE 10 TO BE FURNISHED: NONE 11 REQUESTS: NONE 12 MOTIONS: NONE 13 14 ----- EXHIBITS ----- 15 EXHIBIT FOR ID. 16 Exhibit 98 17 document bearing production 18 number 10282956..... 37 19 Exhibit 99 20 document bearing production 21 number 10265851..... 42 22 Exhibit 100 23 document with the first 24 page bearing production 25 number 10287489..... 47 <p style="text-align: right;">TSG Reporting - Worldwide (877) 702-9580</p> </p>
<p style="text-align: right;">Page 156</p> <p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 101 5 document with the first 6 page bearing production 7 number 10322002..... 50 8 Exhibit 102 9 document bearing production 10 number BCI-EX-(S)-00003505..... 54 11 Exhibit 103 12 document bearing production 13 numbers BCI-EX-00077338 14 through BCI-EX-00077340..... 54 15 Exhibit 104 16 e-mail dated 9/14/2008 17 6:15 a.m. with attachments..... 63 18 Exhibit 105 19 document bearing production 20 number 10321888..... 86 21 Exhibit 106 22 e-mail dated 9/17/2008 2:21 p.m..... 89 23 Exhibit 107 24 document bearing production 25 number 10270027..... 107</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>	<p style="text-align: right;">Page 157</p> <p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 108 5 document bearing production 6 numbers 10269417..... 111 7 Exhibit 109 8 document bearing production 9 numbers 01321878..... 121 10 Exhibit 110 11 document bearing production 12 numbers 10279514..... 123 13 Exhibit 111 14 document bearing production 15 numbers 01279510..... 127 16 Exhibit 112 17 document with the first 18 page bearing production 19 number 10269342..... 138 20 Exhibit 113 21 e-mail dated Thursday, 22 9/18/2008, 9:55:41 a.m..... 144 23 24 25</p> <p style="text-align: center;">TSG Reporting - Worldwide (877) 702-9580</p>

<p>1 2 ----- EXHIBITS ----- 3 EXHIBIT FOR ID. 4 Exhibit 114 5 e-mail dated Saturday, 6 9/20/2008, 6:19:26 a.m..... 146 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>	<p>Page 158</p> <p>1 NAME OF CASE IN RE LEHMAN BROTHERS 2 DATE OF DEPOSITION AUGUST 10TH, 2009 3 NAME OF WITNESS. HUGH E. McGEE, III 4 Reason codes 5 1 To clarify the record. 6 2 To conform to the facts 7 3 To correct transcription errors. 8 Page _____ Line _____ Reason _____ From _____ to _____ 9 Page _____ Line _____ Reason _____ From _____ to _____ 10 Page _____ Line _____ Reason _____ From _____ to _____ 11 Page _____ Line _____ Reason _____ From _____ to _____ 12 Page _____ Line _____ Reason _____ From _____ to _____ 13 Page _____ Line _____ Reason _____ From _____ to _____ 14 Page _____ Line _____ Reason _____ From _____ to _____ 15 Page _____ Line _____ Reason _____ From _____ to _____ 16 Page _____ Line _____ Reason _____ From _____ to _____ 17 Page _____ Line _____ Reason _____ From _____ to _____ 18 Page _____ Line _____ Reason _____ From _____ to _____ 19 Page _____ Line _____ Reason _____ From _____ to _____ 20 Page _____ Line _____ Reason _____ From _____ to _____ 21 Page _____ Line _____ Reason _____ From _____ to _____ 22 Page _____ Line _____ Reason _____ From _____ to _____ 23 24 HUGH E. McGEE, III 25</p> <p>TSG Reporting - Worldwide (877) 702-9580</p>
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